

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/1. INTRODUCTION/(1) HISTORY OF THE COAL-MINING INDUSTRY/1. Transfer of interests to the Coal Commission.

MINES, MINERALS AND QUARRIES (

1. INTRODUCTION

(1) HISTORY OF THE COAL-MINING INDUSTRY

1. Transfer of interests to the Coal Commission.

Whilst the scope of this title covers mining and quarrying generally, it is important to note the significant changes that have occurred over the years to the coal-mining industry in particular. There was no central administration of the coal-mining industry until 1920, when the Mining Industry Act 1920 established the Mines Department of the Board of Trade in order to secure the most effective development and utilisation of the mineral resources of the United Kingdom and the safety and welfare of those engaged in the mining industry¹. The Mining Industry Act 1926 and the Coal Mines Act 1930 (now repealed) provided machinery for reorganisation of the coal-mining industry, and in 1937 a coal holdings register was established so that persons having a proprietary interest in coal and mines of coal in Great Britain² and in certain associated minerals could apply for registration of their interests³. The following year, the Coal Act 1938 (now repealed) made provision for the public ownership of unworked coal⁴ (but not of the industry itself) and established the Coal Commission as a body corporate⁵. On 1 July 1942⁶, there vested in the Coal Commission the fee simple in all coal⁷ and mines of coal⁸ as existing at that date together with all other interests except retained interests⁹ then subsisting in any such coal or mine¹⁰. The Coal Commission also acquired certain annexed property and rights, and certain rights to withdraw support¹¹. Compensation was payable for the interests¹² so acquired¹³. The Board of Trade's functions in relation to the provision of the coal holdings register were also transferred to the Coal Commission at that time¹⁴.

1 See the Mining Industry Act 1920 s 1 (repealed). 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3.

2 ie England, Scotland and Wales: see note 1 supra.

3 See the Coal (Registration of Ownership) Act 1937 (repealed).

4 The provisions relating to the unification of coal-mining royalties in the Coal Act 1938 extended also to land belonging to the Crown or the Duchy of Cornwall (see s 42 (repealed)) and, subject to certain exceptions, to land in the Forest of Dean or any other part of the Hundred of St Briavels (see s 43 (repealed); and PARA 610 post). The Coal Industry Act 1994 makes transitional provisions and savings in relation to the repeal of the Coal Act 1938: see the Coal Industry Act 1994 s 67(7), Sch 10 paras 1-5.

5 See the Coal Act 1938 s 1, Sch 1 (both repealed).

6 ie the vesting date under the Coal Act 1938 s 3(2) (repealed).

7 For the purposes of the Coal Act 1938, 'coal' (1) meant bituminous coal, cannel coal and anthracite; but (2) where minerals or substances other than those were comprised in a lease subsisting at the valuation date (ie 1

January 1939: see s 3(2) (repealed)) which conferred a right to work and carry away both that coal, or anthracite and those other minerals or substances, also included those other minerals or substances unless they were excluded by a direction given by the Coal Commission, and included any of those other minerals or substances which would normally be worked by surface workings not in association with that coal or anthracite unless they were excluded by direction given by the Coal Commission on application of a person interested; and (3) except in the case of references to the making merchantable or disposing of coal, meant unworked coal, ie not so severed as to have become a chattel: see ss 3(4)(a), (b), (c), 44(1) (repealed). The inclusion of 'minerals or other substances' in the definition of 'coal' did not apply to gold, gold ore, silver or silver ore: s 42(1) proviso (repealed).

8 For the purposes of the Coal Act 1938, 'mine of coal' meant a space which was occupied by coal or which had been excavated underground for a coal-mining purpose, and included a shaft and an adit made for a coal-mining purpose; and 'coal-mining purpose' meant searching and boring for, winning, working, getting, carrying away, making merchantable or disposing of coal: see s 44(1) (repealed).

9 The following were retained interests which did not vest in the Coal Commission:

- 1 (1) interests arising under a coal-mining lease (subject to certain exceptions) (see *ibid* s 5(1), (2), (3), (5) (repealed));
- 2 (2) a right to work granted by a working facilities order in so far as it created an interest in any coal or mine of coal (see s 5(4) (repealed));
- 3 (3) retained copyhold interests, ie interests in coal or a mine of coal in or under land formerly copyhold which were preserved to the tenant on enfranchisement, except where the tenant had by custom or otherwise (except by virtue of a coal-mining lease) the right to work coal in or under the land without the lord's licence (see s 5(6) (repealed));
- 4 (4) an interest in coal or a mine of coal arising under a coal-mining lease the lessee under which was a committee appointed for the purposes of a drainage scheme under the Mining Industry Act 1920 s 18 (see PARA 518 post) (see the Coal Act 1938 s 34(2) (repealed)).

It was within the competence of the Coal Commission to acquire: (a) a retained copyhold interest in coal or a mine of coal; (b) certain interests in any minerals or substances other than coal that were capable of being economically gotten in association with the coal being worked; and (c) the benefit of any right to be exercised in respect of any land for a coal-mining purpose: see s 32(1) (repealed). The only retained interest which remains extant is a retained copyhold interest: see PARA 400 et seq post. The Coal Industry Act 1994 ss 49, 50, Sch 7 make provision in regard to the working of coal in former copyhold land: see PARA 400 et seq post. As to copyhold land generally see CUSTOM AND USAGE; REAL PROPERTY.

10 See the Coal Act 1938 s 3(3) (repealed).

11 See *ibid* ss 3(1), 4, Sch 2 (all repealed). As to the statutory right to withdraw support from land in relation to coal mining see PARA 178 et seq post.

12 All such rights and liabilities conferred on the Coal Commission were registrable as overriding interests: see *ibid* s 41 (repealed). As to overriding interests see now the Land Registration Act 2002 ss 11, 12, 29, 30, Sch 1, Sch 3; and LAND REGISTRATION.

13 See the Coal Act 1938 s 6 (repealed).

14 See *ibid* s 35(1) (repealed).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/1. INTRODUCTION/(1) HISTORY OF THE COAL-MINING INDUSTRY/2. The National Coal Board (later renamed the British Coal Corporation).

2. The National Coal Board (later renamed the British Coal Corporation).

The Coal Industry Nationalisation Act 1946¹ effected the nationalisation of the coal-mining industry as from 1 January 1947², and established the National Coal Board³ as a body corporate⁴. On that date there vested in the National Coal Board all the interests in unworked coal⁵ and in mines of coal⁶, of colliery concerns⁷ and of the Coal Commission⁸ and, subject to certain provisions⁹, certain interests which under the Coal Act 1938 were retained interests¹⁰. Compensation was payable¹¹ for the wide range of assets¹² so transferred.

The National Coal Board was charged with the duties of: (1) working and getting the coal in Great Britain¹³ to the exclusion¹⁴ of any other person¹⁵; (2) securing the efficient development of the coal-mining industry¹⁶; and (3) making supplies of coal available in such quantities and at such prices as seemed to it best calculated to further the public interest, including the avoidance of any undue or unreasonable preference or advantage¹⁷. It was also given ancillary functions including the carrying on of such activities as appeared to it to be requisite, advantageous or convenient for it to carry on for or in connection with those duties¹⁸.

Having been thus divested of its interests, the Coal Commission was dissolved on 1 April 1947¹⁹. The National Coal Board was later given additional powers with respect to petroleum²⁰, and also with respect to other minerals discovered in the course of searching or boring for, or working and getting coal²¹. In 1987 the National Coal Board was renamed the British Coal Corporation²² and continued to exercise its existing functions²³ and powers²⁴ under that name until privatisation²⁵.

1 The Coal Industry Nationalisation Act 1946; the Coal Industry Act 1949 Pt I (ss 1-8) (as amended); the Coal Industry (No 2) Act 1949; the Coal Industry Acts 1951, 1956, 1960, 1961; the Coal Consumers' Councils (Northern Irish Interests) Act 1962; the Coal Industry Acts 1962, 1965, 1967, 1971, 1973, 1975; the National Coal Board (Additional Powers) Act 1966; the National Coal Board (Finance) Act 1976; and the Coal Industry Acts 1977, 1980, 1982, 1983, 1985, 1987, 1990 and 1992 were cited together as the Coal Industry Acts 1946 to 1992: see the Coal Industry Act 1992 s 3(2) (repealed by the Coal Industry Act 1994 s 67(8), Sch 11 Pt III as from a day to be appointed under s 68). The Acts listed supra are all repealed from different dates and not all the repeals were effective at the date at which this volume states the law.

2 Ie the primary vesting date: see the Coal Industry Nationalisation Act 1946 s 5(1) (repealed); s 63(1) (repealed by the Coal Industry Act 1994 Sch 11 Pt III as from a day to be appointed under s 68); and the Coal Industry Nationalisation (Primary Vesting Date) Order 1946, SR & O 1946/1986 (spent).

3 See the Coal Industry Nationalisation Act 1946 s 1(1) (repealed). The National Coal Board was renamed the British Coal Corporation in 1987: see the text and note 22 infra.

4 See *ibid* s 2(1) (amended by the Charities Act 1960 s 48(2), Sch 7 Pt II; and the Coal Industry Act 1987 s 1(1), (2), Sch 1 para 1(2), (3)). As to the constitution of the National Coal Board and the salaries paid to its members see the Coal Industry Nationalisation Act 1946 s 2 (as amended); and the Coal Industry Act 1949 s 1 (as amended). Administration matters including the appointment and tenure of members, disclosure of information and procedural requirements for meetings are contained in the Coal Industry Nationalisation (National Coal Board) Regulations 1946, SR & O 1946/1094 (as amended) which were made under the Coal Industry Nationalisation Act 1946 s 2(7) (as amended). Significant changes have now been made to its membership by the Coal Industry Act 1994: see s 23; and PARA 89 post. The Coal Industry Nationalisation Act 1946 s 2 (as amended); and the Coal Industry Act 1949 s 1 (as amended) are already partly repealed and the remainder of these provisions is repealed by the Coal Industry Act 1994 Sch 11 Pt IV as from the dissolution date, at which time the Coal Industry Nationalisation (National Coal Board) Regulations 1946, SR & O 1946/1094 (as amended) will accordingly lapse. As to the dissolution date see PARA 3 note 25 post. As to the dissolution of the British Coal Corporation see PARA 89 post.

5 For the purposes of the Coal Industry Nationalisation Act 1946, 'coal' meant bituminous coal, cannel coal and anthracite: s 63(1) (repealed by the Coal Industry Act 1994 Sch 11 Pt III as from a day to be appointed under s 68).

6 For the purposes of the Coal Industry Nationalisation Act 1946, 'mine of coal' meant a space occupied by unworked coal or excavated underground for the purposes of colliery activities, and included a shaft or adit made for those purposes, a coal quarry and opencast workings of coal: s 63(1) (prospectively repealed: see note 5 supra). 'Colliery activities' meant searching or boring for, winning, working or getting coal, bringing it to the surface, treating it and rendering it saleable, and included depositing spoil arising from working coal or from any other of these activities: s 63(1) (prospectively repealed: see note 5 supra).

7 Certain liabilities for subsidence were transferred from colliery concerns to the National Coal Board at this time: see *ibid* s 48 (repealed). For the purposes of the Coal Industry Nationalisation Act 1946, 'colliery concern' meant a company whose business included the working of coal (excluding working undertaken to dig or carry away coal in the course of activities other than colliery activities, and working undertaken only as ancillary to the working of minerals other than coal), and any other person whose business included such working of coal: s 63(1) (prospectively repealed: see note 5 supra).

8 As to the Coal Commission see *PARA 1 ante*. All interests of the Coal Commission not otherwise vested in the National Coal Board (ie by *ibid* s 5 (repealed): see note 12 *infra*) in land or other fixed property and in moveable property; and the property in, and the right to possession of, records and other documents which were vested in the Coal Commission were also vested in the National Coal Board (see the Coal Act 1938 s 14 (repealed); and the Coal Industry Nationalisation Act 1946 s 38(1) (repealed)), as were contracts to which the Coal Commission had been a party (see s 38(2) (repealed)), and the Commission's compensation functions under the Coal Act 1938 (see the Coal Industry Nationalisation Act 1946 s 38(3) (repealed)). The rights and powers of the Coal Commission in relation to the use of underground land were similarly transferred in accordance with s 8 (repealed).

9 *le* the provisions of *ibid* s 36 (repealed): see note 14 *infra*.

10 *Ibid* s 5(1), Sch 1 para 1(1) (both repealed). On 1 January 1947 all retained interests, with the exception of retained copyhold interests, vested in the National Coal Board. As to retained interests under the Coal Act 1938 see *PARA 1 note 9 ante*. The statutory vesting of coal in the National Coal Board did not extend to the interests of persons other than the Coal Commission in any coal or mine of coal used immediately before 1 January 1947 exclusively or mainly in the course of activities other than colliery activities: see the Coal Industry Nationalisation Act 1946 s 36(1) (repealed).

11 See *ibid* ss 10-25 (repealed).

12 Certain assets were transferred subject to an option (see *ibid* s 5(2), (3), Sch 1 Pts II, III, IV (all repealed)) and certain others were transferred without option (see s 5(1), Sch 1 Pt I (both repealed)). In addition to the assets described in s 5, Sch 1 (both repealed), interests of colliery concerns in patents for inventions and copyrights for designs intended for use or application or capable of being used or applied in connection with colliery production activities vested in the National Coal Board at the option of the Board or of the owners, subject to arbitration in the case of objection: see s 6 (repealed). Rights and liabilities under certain contracts mentioned in Sch 2 (repealed) were transferred to the extent mentioned in that Schedule subject to the right of the National Coal Board to disclaim certain contracts: see s 7 (repealed). All the assets, property, rights and liabilities other than those of the Coal Commission were referred to as 'transferred interests': see s 9(2) (repealed). Regulations (all now spent) were made to ascertain particulars of the transferred assets: see s 9(1), (4) (repealed).

13 The National Coal Board was later given power to do anything outside Great Britain whether or not related to working and getting coal in Great Britain, which appeared to it requisite, advantageous or convenient and which it was required or authorised to do in Great Britain, provided it had the consent of the Secretary of State and, if capital expenditure was involved, also the approval of the Treasury: see the Coal Industry Act 1977 s 11 (as originally enacted). Section 11 is already partly repealed and the remainder is repealed by the Coal Industry Act 1994 Sch 11 Pts III, IV as from days to be appointed. As to the Secretary of State see *PARA 4 post*. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) *PARA 512 et seq*. For the meaning of 'Great Britain' see *PARA 1 note 1 ante*.

14 This provision was subject to certain exceptions. In particular, it did not make it unlawful to dig or carry away coal that was necessary to be dug or carried away in the course of activities other than colliery activities; and interests of persons other than the Coal Commission in any such coal or in a mine of coal used immediately before 1 January 1947 exclusively or mainly in the course of such other activities were excepted from vesting in the National Coal Board under the Coal Industry Nationalisation Act 1946 s 5 (repealed): see s 36(1) (repealed). It was also within the power of the National Coal Board to grant licences to others for the working and getting of coal: see s 36(2), (2A), (3) (repealed). Licences under these provisions were granted in respect of the Forest of

Dean: see PARA 608 et seq post. As to the continuation of licences granted under these provisions as authorisations under the Coal Industry Act 1994 Pt II (ss 25-36) (as amended) see s 25(3), (4); and PARA 91 post.

15 Coal Industry Nationalisation Act 1946 s 1(1)(a) (repealed).

16 Ibid s 1(1)(b) (repealed).

17 Ibid s 1(1)(c) (repealed).

18 See ibid s 1(2)-(4) (as originally enacted). Section 1(2)-(4) is repealed by the Coal Industry Act 1994 Sch 11 Pt IV as from the dissolution date: see PARAS 3 note 25, 89 post.

19 See the Coal Industry Nationalisation Act 1946 s 38(5) (repealed); and the Coal Commission (Dissolution) Order 1947, SR & O 1947/396. The Coal Commission's reserve fund had been wound up and transferred to the National Coal Board on 30 March 1947 by Treasury direction under the Coal Industry Nationalisation Act 1946 s 38(4) (repealed).

20 See the National Coal Board (Additional Powers) Act 1966 ss 1, 2 (both repealed); and the Coal Industry Act 1977 s 9(1)-(4) (repealed). As to petroleum production generally see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1625 et seq.

21 See ibid s 10 (as originally enacted). This provision is repealed by the Coal Industry Act 1994 Sch 11 Pt IV as from the dissolution date: see PARAS 3 note 25, 89 post.

22 See the Coal Industry Act 1987 s 1 (repealed by the Coal Industry Act 1994 Sch 11 Pt IV as from the dissolution date: see PARAS 3 note 25, 89 post). The change of name took effect on 5 March 1987 (the day on which the Coal Industry Act 1987 came into force), although the name 'British Coal' had been used for trading purposes since June 1986. The records of the British Coal Corporation are public records for the purposes of the Public Records Act 1958: see s 10, Sch 1 para 3 Table Pt II (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 835.

23 These functions included: (1) searching and boring for coal in Great Britain (originally this was to the exclusion of any other person but that restriction was removed with effect from 31 October 1994 (see PARA 3 note 9 post) by the Coal Industry Act 1994 s 7(2), Sch 11 Pt II); (2) treating, rendering saleable, supplying and selling coal; (3) producing, manufacturing, treating, rendering saleable, supplying and selling products of coal; (4) producing or manufacturing any goods or utilities of a kind required by the British Coal Corporation for or in connection with the working or getting of coal or any other of its activities, or which could advantageously be produced or manufactured by the Corporation by reason of its having materials or facilities for their production or manufacture in connection with the working or getting of coal or any other of its activities, and supplying and selling goods or utilities so produced or manufactured; (5) activities which could advantageously be carried on by the British Coal Corporation with a view to making the best use of its assets; and (6) activities conducive to advancing the skill of persons employed for the purposes of any of those activities, or the efficiency of equipment and methods to be used for them, including the provision by the British Coal Corporation itself, and its assisting the provision by others, of facilities for training, education and research: see the Coal Industry Nationalisation Act 1946 s 1(2) (amended by the Coal Industry Act 1977 s 15, Sch 4 para 1; the Coal Industry Act 1987 s 1(1), (2), Sch 1 para 1(1), (3); and the Coal Industry Act 1990 s 4(4)). The Coal Industry Nationalisation Act 1946 s 1(2) (as amended) is repealed by the Coal Industry Act 1994 Sch 11 Pt IV as from the dissolution date: see PARAS 3 note 25, 89 post.

24 The British Coal Corporation had power to do anything and to enter into any transaction (whether or not involving the expenditure, borrowing or lending of money, the acquisition of any property or rights, or the disposal of any property or rights not in its opinion required for the proper discharge of its duties) which in its opinion was calculated to facilitate the proper discharge of its duties or the carrying on of its ancillary activities or was incidental or conducive to that purpose: see the Coal Industry Nationalisation Act 1946 s 1(3) (s 1(3), (4) amended by the Coal Industry Act 1987 Sch 1 para 1(1), (3)).

The stated policy of the British Coal Corporation was to secure, consistently with the proper discharge of its duties: (1) the safety, health and welfare of persons in its employment; (2) the benefit of the practical knowledge and experience of such persons in the organisation and conduct of the operations in which they were employed; and (3) that the revenues of the Corporation were not less than sufficient to meet all its outgoings properly chargeable to revenue account (including provisions in respect of its obligations under the Coal Industry Nationalisation Act 1946 ss 28, 29 (both as amended and prospectively repealed)) on an average of good and bad years: see s 1(4) (as so amended). Section 1(3), (4) (as amended) is repealed by the Coal Industry Act 1994 Sch 11 Pt IV as from the dissolution date: see PARAS 3 note 25, 89 post.

25 As to the restructuring of the coal industry under privatisation see PARAS 3, 50 et seq post. As to the restructuring of the British Coal Corporation's functions under the Coal Industry Act 1994 see PARA 72 post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/1. INTRODUCTION/(1) HISTORY OF THE COAL-MINING INDUSTRY/3. Privatisation of the coal industry.

3. Privatisation of the coal industry.

The privatisation of the coal industry was introduced in two stages. The first stage occurred in 1990 with the raising of the limits on the number of men who could be employed underground or, as appropriate, the tonnage of coal to be got from an opencast operation¹ worked in accordance with a licence granted by the British Coal Corporation². This made it possible for reasonably substantial mines to be worked otherwise than by the British Coal Corporation. The British Coal Corporation therefore granted licences to independent operators enabling the continued working of a number of underground mines which had previously been worked by the British Coal Corporation but which it would otherwise have closed permanently. In those cases, it leased the surface land at mines concerned to the relevant operator. In 1993 the restrictions on the permitted hours of work below ground in coal mines³ were removed⁴.

The second stage of privatisation was the passing of the Coal Industry Act 1994⁵ which provided for the coal industry to return to the private sector, operating under a licensing system⁶. The way had been paved the previous year by the British Coal and British Rail (Transfer Proposals) Act 1993 which enabled the British Coal Corporation to act in relation to government proposals for the transfer of its functions, property, rights and liabilities to another body or person⁷. The Coal Industry Act 1994 established the Coal Authority⁸, which on 31 October 1994⁹ succeeded to the interests of the British Coal Corporation in unworked coal and coal mines¹⁰. The Coal Industry Act 1994 introduced a prohibition from that date on the carrying on of coal-mining operations¹¹ otherwise than under a licence granted under the Act, or, subject to certain qualifications, under a licence granted under the Coal Industry Nationalisation Act 1946¹². At that time the British Coal Corporation remained the largest operator of coal mines, and the Secretary of State¹³ granted licences¹⁴ to the British Coal Corporation in respect of its mines (both underground and opencast). Contemporaneously with the grant of those licences, the Coal Authority granted leases of the relevant coal and coal mines to the British Coal Corporation¹⁵. The Secretary of State also granted a number of conditional licences¹⁶ to the British Coal Corporation; and the Coal Authority granted to the British Coal Corporation options for leases of the coal relevant to those conditional licences. Subsequently, the coal-mining undertaking of the British Coal Corporation with the assets attributable to it (including the licences, conditional licences, leases and options for leases) was vested, by restructuring schemes made by the Secretary of State¹⁷, in separate companies wholly owned by the Crown, known as 'successor companies'¹⁸. The Coal Authority assumed powers and duties relating to licensing these successor companies before they were then sold¹⁹. The Coal Authority also took on the responsibility for certain subsidence damage claims²⁰ and the provision of information²¹.

The European Commission approved the plan to modernise, rationalise and restructure the coal industry as complying with the objectives of making the United Kingdom coal industry fully competitive with coal prices on international markets and privatising the British Coal Corporation²², and it therefore authorised the grant by the United Kingdom government of financial aid to the coal industry in relation to the associated costs and liabilities²³.

The vast majority of its interests having been transferred by a series of restructuring schemes, the British Coal Corporation now enjoys only very limited residual functions and powers²⁴ and the remaining shell company will eventually be dissolved²⁵.

¹ See the amendments which were made by the Coal Industry Act 1990 s 4(1) (now repealed) to the Coal Industry Nationalisation Act 1946 s 36(2) (now repealed).

2 le a licence granted under *ibid* s 36 (repealed). As to the British Coal Corporation see PARA 2 ante. As to such licences see PARA 2 note 14 ante.

3 le the restrictions contained in the Coal Mines Regulation Act 1908 (repealed).

4 See the Coal Industry Act 1992 s 2 (which took effect on 20 November 1993; the whole of the Act was subsequently repealed by the Coal Industry Act 1994 s 67(8), Sch 11 Pt III as from a day to be appointed under s 68).

5 The Coal Industry Act 1994 received Royal Assent on 5 July 1994. As to the restructuring of the coal industry under privatisation see PARA 50 et seq post.

6 See PARA 91 et seq post.

7 See the British Coal and British Rail (Transfer Proposals) Act 1993 (repealed by the Coal Industry Act 1994 Sch 11 Pt III as from a day to be appointed under s 68).

8 As to the Coal Authority see PARA 52 et seq post.

9 le the date appointed as the 'restructuring date' under the Coal Industry Act 1994 s 7(1): see s 65(1); and the Coal Industry (Restructuring Date) Order 1994, SI 1994/2553.

10 See the Coal Industry Act 1994 s 7(3). The retained copyhold interests which had not vested in the National Coal Board were unaffected by the transfer of the British Coal Corporation's interests to the Coal Authority: see PARA 400 et seq post. As to retained interests see PARA 1 note 9 ante.

11 For the meaning of 'coal-mining operations' see PARA 50 note 10 post.

12 See the Coal Industry Act 1994 s 25(1), (3), (4); and PARA 91 et seq post. The licensing provisions referred to are those of Pt II (ss 25-36) (as amended). Note that the limits on the number of men who could be employed underground or, as appropriate, the tonnage of coal to be got from an opencast operation under the Coal Industry Nationalisation Act 1946 s 36 (amended by the Coal Industry Act 1990 s 4; now repealed) which had hitherto applied to the licensing powers of the British Coal Corporation had been removed since 5 July 1994: see the Coal Industry Act 1994 s 7(1).

13 As to the Secretary of State see PARA 4 post.

14 The relevant licences were granted to the British Coal Corporation by the Secretary of State in exercise of his powers under the Coal Industry Act 1994 s 26(6) (see PARA 92 post). As to the licensing of coal-mining operations see PARA 91 et seq post.

15 le by direction of the Secretary of State under *ibid* s 6(1): see PARA 66 post.

16 le licences which contained conditions under which the authorisation was postponed until the fulfilment of specified requirements. As to the conditions which may be included in licences see PARAS 96-97 post.

17 le under the Coal Industry Act 1994 s 12 (see PARA 73 post). As to restructuring schemes see PARA 73 post.

18 As to successor companies see PARA 75 post.

19 See PARA 75 post.

20 These were broadly those not in areas of then current mining. As to subsidence damage by coal mining see PARA 202 et seq post.

21 As to the Coal Authority's duties regarding the provision of information see PARAS 109-110 post.

22 See EC Commission Decision 94/574/ECSC (OJ L220, 25.8.94, p 12).

23 Financial aid was authorised in relation to: (1) contributions to pension schemes for former workers of the British Coal Corporation and their dependants (see PARA 80 et seq post); (2) exceptional social welfare benefits for workers who lost their jobs as a result of the restructuring, rationalisation and modernisation of the United Kingdom coal industry (see PARA 87 et seq post); (3) concessionary fuel entitlement for former British Coal Corporation workers and their dependants (see PARA 78 post); (4) compensation for industrial injury and damage to health for former workers of the British Coal Corporation and their dependants; (5) the costs from the residual activities of the British Coal Corporation (see PARA 76 et seq post); and (6) environmental damage caused by mining activities before privatisation: see EC Commission Decision 97/577/ECSC (OJ L237, 28.8.97, p

13). Industrial injury actions have been brought regarding various work-related conditions, such as lung diseases (see eg *Re British Coal Respiratory Disease Litigation* (23 January 1998, unreported), QBD; *Griffiths v British Coal Corp* [2001] EWCA Civ 336, [2001] 1 WLR 1493) and vibratory white finger (see eg *Armstrong v British Coal Corp* [1997] 8 Med LR 259, (1996) Times, 6 December, CA).

24 As to the restructuring of the British Coal Corporation's functions see PARA 72 post. The remaining empowering statutory provisions, although still extant, are now prospectively repealed by the Coal Industry Act 1994 Sch 11 Pts III, IV from days to be appointed (see PARA 1 note 1 ante). See eg the Coal Industry Nationalisation Act 1946 s 3 (as amended) (directions by the Secretary of State); s 27 (as substituted and amended) (temporary borrowing powers); s 28 (as amended) (payments to the Secretary of State); s 29 (as amended) (establishment of reserve fund); s 31 (as amended) (accounts and audit); ss 32, 33 (both as amended) (stock); s 34 (as amended) (issues out of Consolidated Fund); s 35 (account of Secretary of State's receipts); s 37 (as amended), Sch 2A (as added and amended) (superannuation); s 41 (as amended) (variation of trusts); s 46 (as amended) (duties of consultation); s 47 (as amended) (no exemption from taxation); s 49 (as amended) (liability); s 54 (as amended) (annual report); s 55 (as amended) (Secretary of State's expenses); s 56 (as amended) (restrictions on disclosure of information); s 59 (prosecutions and offences); s 60 (service of notices etc); s 61 (arbitration); s 62 (as amended) (regulations); the Coal Industry Act 1949 s 4 (as amended) (superannuation); the Coal Industry Act 1962 s 2 (as amended) (financial year); the Coal Industry Act 1965 s 1 (as substituted and amended) (borrowing by the Corporation); s 4 (as amended) (pensions and compensation); the Coal Industry Act 1971 s 7 (as amended) (directions by the Secretary of State); s 8 (as amended) (annual accounts); s 9 (as amended) (issues out of Consolidated Fund); the Coal Industry Act 1973 s 1 (as amended) (capital reconstruction); s 2 (as amended) (borrowing powers of the British Coal Corporation and its subsidiaries); s 10 (as amended) (membership limits); s 11 (administrative expenses); Coal Industry Act 1975 s 1 (as amended) (grants to the British Coal Corporation to meet expenditure under the pneumoconiosis compensation scheme); s 2 (as amended) (withdrawal of support); the National Coal Board (Finance) Act 1976 s 2 (as amended) (pension scheme deficiency payments); the Coal Industry Act 1977 s 7 (as amended) (payments to redundant workers); s 13 (Secretary of State's administrative expenses); the Coal Industry Act 1980 s 2 (as amended) (loans to the British Coal Corporation); s 9 (Secretary of State's administrative expenses); the Coal Industry Act 1982 s 3 (as amended) (reimbursement in respect of loss of superannuation and employment prospects); the Coal Industry Act 1985 s 3 (as amended) (payments to redundant workers); the Coal Industry Act 1987 s 3 (as amended) (grants for workforce redeployment and reduction); s 4 (as amended) (pit closures); ss 5-8 (as amended) (see PARA 88 post) (participation by representative organisations in the management of trusts and bodies connected with the coal industry); Coal Industry Act 1990 s 1 (deficiency grants to the British Coal Corporation).

25 le on the date appointed as the 'dissolution date' under the Coal Industry Act 1994 s 23 for the dissolution of the British Coal Corporation: see s 23(2). At the date at which this volume states the law, no dissolution date had been appointed. As to the dissolution of the British Coal Corporation see PARA 89 post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/1. INTRODUCTION/(2) THE SECRETARY OF STATE AND THE NATIONAL ASSEMBLY FOR WALES/4. The Secretary of State and the National Assembly for Wales.

(2) THE SECRETARY OF STATE AND THE NATIONAL ASSEMBLY FOR WALES

4. The Secretary of State and the National Assembly for Wales.

The administration of the coal-mining industry was initially the responsibility of the Mines Department of the Board of Trade, and over the years ministerial functions have been transferred¹ to the Minister of Fuel and Power² (who became the Minister of Power³), the Minister of Technology⁴, the Secretary of State for Trade and Industry⁵, and the Secretary of State for Energy⁶; they are now once again predominantly vested in the Secretary of State for Trade and Industry⁷. Functions in relation to mining which were initially the responsibility of the Minister of Town and Country Planning⁸ were transferred to the Minister of Local Government and Planning⁹ (later the Minister of Housing and Local Government¹⁰), then to the Secretary of State for the Environment¹¹, and subsequently became the responsibility of the Secretary of State for the Environment, Transport and the Regions¹². Functions of the Secretary of State for the Environment, Transport and the Regions have been divided between the Secretary of State for Transport, Local Government and the Regions and the Secretary of State for Environment, Food and Rural Affairs¹³. Health and safety functions are now mainly carried out by the Health and Safety Commission and the Health and Safety Executive, both of which are the responsibility of the Department for Work and Pensions¹⁴.

Older statutes refer to specific ministers or government departments¹⁵, but many modern statutes refer simply to 'the Secretary of State' without reference to a particular department or ministry. 'Secretary of State' means one of Her Majesty's principal Secretaries of State¹⁶; the office of Secretary of State is a unified office, and in law each Secretary of State is capable of performing the functions of all or any of them¹⁷.

Many statutory functions vested in Ministers of the Crown are now exercisable in relation to Wales by the National Assembly for Wales¹⁸. Functions transferred¹⁹ include specified functions under the Inclosure Act 1845²⁰; the Inclosure Act 1859²¹; the Opencast Coal Act 1958²²; the Mines (Working Facilities and Support) Act 1966²³; the Mines and Quarries (Tips) Act 1969²⁴; the Local Government Act 1972²⁵; the Acquisition of Land Act 1981²⁶; the Town and Country Planning Act 1990²⁷; the Water Industry Act 1991²⁸; the Water Resources Act 1991²⁹; the Coal Industry Act 1994³⁰; and the Environment Act 1995³¹. In general, Acts that have come into force since the establishment of the National Assembly for Wales make specific provision for the exercise of functions in relation to Wales.

¹ As to the transfer of functions generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 363.

² See the Ministry of Fuel and Power Act 1945 s 1, Sch 1 (repealed); and the Ministers of the Crown (Minister of Fuel and Power) Order 1942, SR & O 1942/1132.

³ See the Minister of Fuel and Power (Change of Style and Title) Order 1957, SI 1957/48.

⁴ See the Minister of Technology Order 1969, SI 1969/1498.

⁵ See the Secretary of State for Trade and Industry Order 1970, SI 1970/1537.

⁶ See the Secretary of State (New Departments) Order 1974, SI 1974/692.

- 7 See the Transfer of Functions (Energy) Order 1992, SI 1992/1314. As to the Secretary of State for Trade and Industry see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 506; COMPETITION vol 18 (2009) PARA 5.
 - 8 See the Minister of Town and Country Planning Act 1943 s 1 (repealed).
 - 9 See the Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No 1) Order 1951, SI 1951/142.
 - 10 See the Minister of Local Government and Planning (Change of Style and Title) Order 1951, SI 1951/1900.
 - 11 See the Secretary of State for the Environment Order 1970, SI 1970/1681.
 - 12 See the Secretary of State for the Environment, Transport and the Regions Order 1997, SI 1997/2971.
 - 13 See the Secretaries of State for Transport, Local Government and the Regions and for Environment, Food and Rural Affairs Order 2001, SI 2001/2568 (amended by SI 2002/2626). On the dissolution of the Ministry of Agriculture, Fisheries and Food, the functions of the Minister of Agriculture, Fisheries and Food were transferred to the Secretary of State for Environment, Food and Rural Affairs: see the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794.
 - 14 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq. The Department for Work and Pensions is the successor to the Department for Education and Employment. It was created in 2001 when that department and the former Department of Social Security were restructured.
 - 15 The Mining Industry Act 1920 and the Coal Act 1938 (now repealed) referred to the Board of Trade. The Coal Industry Nationalisation Act 1946, the Miners' Welfare Act 1952 and the Mines and Quarries Act 1954 referred to the Minister of Fuel and Power. The Opencast Coal Act 1958, the Mines (Working Facilities and Support) Act 1966, the National Coal Board (Additional Powers) Act 1966 and the Coal Industry Act 1967 referred to the Minister of Power. The Mineral Workings Act 1951 referred to the Minister of Local Government and Planning. The Mines and Quarries (Tips) Act 1969 referred to the Minister of Housing and Local Government.
 - 16 See the Interpretation Act 1978 s 5, Sch 1.
 - 17 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 355.
 - 18 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 2, Sch 1. As to the establishment, constitution and functions of the National Assembly for Wales see the Government of Wales Act 1998; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.
- Any enactment which charges the payment of any sum on the Consolidated Fund or requires or authorises the payment of any sum from that Fund, or requires or authorises the payment of any sum out of money provided by Parliament, ceases to have effect in so far as that sum is payable by the Assembly: s 89. As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.
- 19 Ie by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1 (as amended).
 - 20 As to the Inclosure Act 1845 see PARAS 316-318 post; and COMMONS vol 13 (2009) PARA 419 et seq.
 - 21 As to the Inclosure Act 1859 see PARAS 265, 275, 316 post; and COMMONS vol 13 (2009) PARA 419 et seq.
 - 22 As to the Opencast Coal Act 1958 see PARA 404 et seq post.
 - 23 As to the Mines (Working Facilities and Support) Act 1966 see PARA 383 et seq post.
 - 24 Ie except the Mines and Quarries (Tips) Act 1969 Pt I (ss 1-10) (as amended) (see PARAS 511-561 post). As to the Mines and Quarries (Tips) Act 1969 generally see PARA 511 et seq post.
 - 25 As to the Local Government Act 1972 see PARAS 561, 577 post; and LOCAL GOVERNMENT vol 69 (2009) PARA 24 et seq.
 - 26 As to the Acquisition of Land Act 1981 see PARAS 421, 433 post; and COMPULSORY ACQUISITION OF LAND.
 - 27 As to the Town and Country Planning Act 1990 see PARA 355 et seq; and TOWN AND COUNTRY PLANNING.

28 As to the Water Industry Act 1991 see eg paras 137, 429 post; and WATER AND WATERWAYS vol 100 (2009) PARAS 108 et seq, 137 et seq, 318 et seq; WATER AND WATERWAYS vol 101 (2009) PARA 453 et seq.

29 As to the Water Resources Act 1991 see eg paras 110, 269, 529 post; and WATER AND WATERWAYS vol 100 (2009) PARA 191 et seq; WATER AND WATERWAYS vol 101 (2009) PARA 453 et seq.

30 Ie the Coal Industry Act 1994 ss 53, 54 (see PARAS 356, 357, 391 post). As to the Coal Industry Act 1994 generally see PARA 52 et seq post.

31 As to the Environment Act 1995 see eg paras 269, 355 post; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; TOWN AND COUNTRY PLANNING; WATER AND WATERWAYS.

UPDATE

4 The Secretary of State and the National Assembly for Wales

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 14--Health and Safety Commission replaced by the Health and Safety Executive: see Legislative Reform (Health and Safety Executive) Order 2008, SI 2008/960; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

NOTE 18--As to the National Assembly for Wales and the Welsh Assembly Government, see Government of Wales Act 2006; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(1) TERMINOLOGY/(i) Mines and Quarries/5. Meaning of 'mine'.

2. OWNERSHIP

(1) TERMINOLOGY

(i) Mines and Quarries

5. Meaning of 'mine'.

In a document or statute 'mine' takes its meaning from the other words used in the document or statute, and from its factual context¹. The word 'mine' is not a definite term, but is susceptible of limitation or expansion according to the intention with which it is used². 'Mine' originally meant an underground excavation made for the purpose of getting minerals³, but in particular contexts the word has been given differing meanings. Thus it has been interpreted so as to include a place where minerals commonly worked underground are in the particular case being worked on the surface, as in opencast coal workings and in certain ironstone mines⁴.

It may also denote a stratum, vein or seam of mineral, as in the phrase 'all that mine, vein, or seam of coal'⁵. If, in such a case, the mine is unopened⁶, it is clear that the word is used in the sense of a stratum of mineral⁷. Where so used, the primary meaning of 'mine' is that of a vein or seam⁸, but it may be used in a wider sense to denote a number of veins or seams⁹, or in a narrower sense to denote only that part of a vein or seam which is within a particular tenement¹⁰.

A further meaning of 'mine' includes not only the mineral deposits but also so much of the adjoining strata, whether above or below, as it may be necessary to remove for the purpose of working the mineral in a proper manner¹¹. The word has also been given, in some cases, a meaning which includes, in addition to the mineral itself, the space created as the mineral is being worked, and the space left when the mineral has been worked out¹².

Where the word 'mine' occurs in legislation it may be used in a special sense and it is sometimes expressly defined. Examples¹³ of such legislation are the Mines and Quarries Act 1954¹⁴, the Coal Industry Act 1994¹⁵ and the Town and Country Planning (General Permitted Development) Order 1995¹⁶. 'Mine' is often defined by reference to the minerals extracted¹⁷.

1 See, on the construction of documents generally, *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 All ER 114-115, [1998] 1 WLR 896 at 912-913, HL, per Lord Hoffmann.

2 *Glasgow Corp'n v Farie* (1888) 13 App Cas 657 at 675, HL, per Lord Watson; *Midland Rly Co v Haunchwood Brick and Tile Co* (1882) 20 ChD 552 at 555 per Kay J; *South Staffordshire Mines Drainage Comrs v Grosvenor Colliery Co Ltd* (1961) 125 JP 484 at 485, CA, per Sellers LJ.

3 *Glasgow Corp'n v Farie* (1888) 13 App Cas 657 at 670, HL, per Lord Halsbury LC, and at 676 per Lord Watson; *Bell v Wilson* (1866) 1 Ch App 303 at 308 per Turner LJ. Some authorities indicate that this original meaning of 'mine' is to be regarded as the primary or ordinary meaning: *Midland Rly Co v Haunchwood Brick and Tile Co* (1882) 20 ChD 552 at 555 per Kay J; *Glasgow Corp'n v Farie* supra at 683 per Lord Herschell (dissenting), and at 687 per Lord Macnaghten; *Midland Rly Co and Kettering, Thrapston and Huntingdon Rly Co v Robinson* (1889) 15 App Cas 19 at 34, HL, per Lord Macnaghten (dissenting); but these last two authorities have been said not to be of general effect: see *South Staffordshire Mines Drainage Comrs v Grosvenor Colliery Co Ltd* (1961) 125 JP 484 at 485, CA, per Sellers LJ. See also *South Staffordshire Mines Drainage Comrs v Elwell & Sons* (1927) 97 LJB 13 at 15, CA, per Bankes LJ; and cf *NSW Associated Blue-Metal Quarries Ltd v Federal Comr of Taxation* (1956) 94 CLR 509, [1956] ALR 286, Aust HC. For the meaning of 'minerals' see PARA 12 post.

4 *South Staffordshire Mines Drainage Comrs v Grosvenor Colliery Co Ltd* (1961) 125 JP 484, CA; *Glasgow Corp v Farie* (1888) 13 App Cas 657 at 678, HL, per Lord Watson, and at 684 per Lord Herschell (dissenting); and see *Sim v Evans* (1875) 23 WR 730; and *Rogers (Inspector of Taxes) v Longsdon* [1967] Ch 93 at 110, [1966] 2 All ER 49 at 57 per Stamp J. See also the cases cited in PARA 6 note 2 post. As to the opencast working of coal see PARA 404 et seq post.

5 *Lord Abinger v Ashton* (1873) LR 17 Eq 358 at 369 per Jessel MR; *Ramsay v Blair* (1876) 1 App Cas 701 at 705, HL, per Lord Selborne; *Midland Rly Co v Haunchwood Brick and Tile Co* (1882) 20 ChD 552 at 555 per Kay J; *Glasgow Corp v Farie* (1888) 13 App Cas 657 at 677, HL, per Lord Watson, and at 687 per Lord Macnaghten; *Batten Pooll v Kennedy* [1907] 1 Ch 256 at 266 per Warrington J.

6 As to open and unopened mines see PARA 7 et seq post.

7 *Ramsay v Blair* (1876) 1 App Cas 701 at 705, HL, per Lord Selborne; *Midland Rly Co v Haunchwood Brick and Tile Co* (1882) 20 ChD 552; *Glasgow Corp v Farie* (1888) 13 App Cas 657 at 687, HL, per Lord Macnaghten. A grant of 'lands and mines', where some of the mines are open, includes, however, only the open mines: *Astry v Ballard* (1677) 2 Mod Rep 193; and see *Newton, Chambers & Co Ltd v Hall* [1907] 2 KB 446 at 458, 459 per Bray J. Where 'mine' is used to express the substance as distinct from the working, it may be confined to substances to be got by mining in the ordinary sense of that term, and not by open working on the surface: see *Tucker v Linger* (1882) 21 ChD 18 at 36, CA, per Sir George Jessel MR; affd (1883) 8 App Cas 508, HL.

8 See the authorities cited in note 4 supra.

9 *Spencer v Scurr* (1862) 31 Beav 334.

10 *Ivimey v Stocker* (1866) 1 Ch App 396 at 407 per Lord Cranworth LC; *Van Mining Co v Llanidloes Overseers* (1876) 1 Ex D 310 at 319 per Mellor J. See also *R v Foleshill Inhabitants* (1835) 2 Ad & El 593.

11 *Batten Pooll v Kennedy* [1907] 1 Ch 256; following *Proud v Bates* (1865) 34 LJ Ch 406; *Duke of Hamilton v Graham* (1871) LR 2 Sc & Div 166; *Eardley v Granville* (1876) 3 ChD 826; and distinguishing *Ramsay v Blair* (1876) 1 App Cas 701, HL. As to the construction of roads by a person having a right of property in a mine see PARA 257 post.

12 *Bowser v Maclean* (1860) 2 De GF & J 415 at 420; *Proud v Bates* (1865) 34 LJ Ch 406 at 411; *Duke of Hamilton v Graham* (1871) LR 2 Sc & Div 166; *Ramsay v Blair* (1876) 1 App Cas 701 at 705, HL, per Lord Selborne; *Glasgow Corp v Farie* (1888) 13 App Cas 657 at 687, HL, per Lord Macnaghten; *Batten Pooll v Kennedy* [1907] 1 Ch 256 at 267 per Warrington J.

13 See also the statutory definitions of 'mines and minerals' in PARA 12 post.

14 'Mine' means an excavation or system of excavations, including all such excavations to which a common system of ventilation is provided, made for the purpose of, or in connection with, the getting, wholly or substantially by means involving the employment of persons below ground, of minerals (whether in their natural state or in solution or suspension) or products of minerals: Mines and Quarries Act 1954 s 180(1) (substituted by the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 41(2), Sch 3 Pt II); and see HEALTH AND SAFETY AT WORK. In the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, 'mine' means a mine within the meaning of the Mines and Quarries Act 1954: Management and Administration of Health and Safety at Mines Regulations 1993, SI 1993/1897, reg 2(1) (amended by SI 1995/2005). In some instances, health and safety regulations use the word 'mine' in special senses: see the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897 (as amended); and HEALTH AND SAFETY AT WORK.

For the purposes of the Mines and Quarries Act 1954, so much of the surface (including buildings, structures and works on it) surrounding or adjacent to the shafts or outlets of the mine as is occupied together with the mine for the purpose of, or in connection with, the working of the mine, the treatment, preparation for sale, consumption or use, storage or removal from the mine of the minerals or products thereof gotten from the mine or the removal from the mine of the refuse thereof, is deemed to form part of a mine (s 180(3)(a); and see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 343); provided that premises in which a manufacturing process is carried on otherwise than for the purpose of the working of the mine or the preparation for sale of minerals gotten from it are not, for these purposes, deemed to form part of the mine (see s 180(3) proviso (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 343). 'Shaft' means a shaft the top of which is, or is intended to be, at the surface: s 182(1). A conveyor or aerial ropeway provided for the removal from the mine of minerals or refuse from it is deemed to form part of the mine: see s 180(6) (amended by the Quarries Regulations 1999, SI 1999/2024, reg 47(2), Sch 2 Pt II).

Premises exclusively occupied by the owner of the mine for the time being used for depositing refuse from it are also deemed to be part of the mine, and premises for the time being used for depositing refuse from two or more mines, being premises occupied by the owner of one of those mines (either exclusively or jointly with the owner of the other or any of the others) are deemed to form part of such one of those mines as the Health and

Safety Executive may direct: see the Mines and Quarries Act 1954 s 180(4) (s 180(4), (5) amended by virtue of the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(1) (a), Sch 2 para 3; and the Quarries Regulations 1999, SI 1999/2024, reg 47(2), Sch 2 Pt II); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 343.

A railway line serving a single mine (not being a railway line falling under the Mines and Quarries Act 1954 s 180(3) (as amended) or a railway line belonging to a railway company) is deemed to form part of the mine, and such a railway line jointly serving two or more mines is deemed to form part of such one of them as the Health and Safety Executive may direct: s 180(5) (as so amended); and see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 343. 'Railway company' means any persons authorised by an enactment to construct, work or carry on a railway; and 'enactment' includes a provision of an order or scheme made under or confirmed by an Act: s 182(1) (definition amended by the Transport Act 1962 s 95(2), Sch 12 Pt II).

As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

15 'Coal mine' includes: (1) any space excavated underground for the purposes of coal-mining operations and any shaft or adit made for those purposes; (2) any space occupied by unworked coal; and (3) a coal quarry and opencast workings of coal: Coal Industry Act 1994 s 65(1). For the meaning of 'coal-mining operations' see PARA 50 note 10 post.

16 'Mine' means any site on which mining operations are carried out: see the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 1(2); *English Clays Lovering Pochin & Co Ltd v Plymouth Corp'n* [1974] 2 All ER 239 at 242, [1974] 1 WLR 742 at 745, CA; and TOWN AND COUNTRY PLANNING.

17 For the meaning of 'minerals' see PARA 12 post. 'Mines' means mines of coal, ironstone, slate and other minerals: see the Acquisition of Land Act 1981 s 3, Sch 2 para 1(2); the Water Industry Act 1991 s 188, Sch 14 para 7(1); the Water Resources Act 1991 s 182, Sch 23 para 7(1) (amended by the Environment Act 1995 s 120(1), Sch 22 para 128). See also the High Peak Mining Customs and Mineral Courts Act 1851 and the Derbyshire Mining Customs and Mineral Courts Act 1852 which define 'mine' or 'mines', and 'vein' or 'veins' as a mine or mines, vein or veins of lead ore, and include parts of or shares in any mine or vein as well as entire mines and veins, and all minerals containing lead ore: High Peak Mining Customs and Mineral Courts Act 1851 s 2; Derbyshire Mining Customs and Mineral Courts Act 1852 s 2. As to lead mining in Derbyshire see PARA 593 et seq post.

UPDATE

5-6 Meaning of 'mine', Meaning of quarry

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(1) TERMINOLOGY/(i) Mines and Quarries/6. Meaning of 'quarry'.

6. Meaning of 'quarry'.

'Quarry' usually implies surface workings of minerals, leaving no roof overhead¹. The manner in which the minerals are extracted is not, however, a conclusive test in distinguishing a quarry from a mine². Thus in some circumstances surface workings are regarded as mines³, while 'quarry' may be used to denote workings for slate even where they are carried on almost exclusively underground⁴, although it has been held that a slate quarry worked by means of underground levels is a mine⁵. A sand or gravel pit may be a quarry, but workings in a heap of furnace slag are not⁶.

For the purposes of the Quarries Regulations 1999⁷, 'quarry' means:

- 1 (1) an excavation⁸ or system of excavations made for the purpose of, or in connection with, the extraction of minerals⁹ or products of minerals, being neither a mine nor merely a well or borehole or a well and borehole combined¹⁰;
- 2 (2) any reclamation site¹¹ from which minerals are being extracted for sale or further use¹²; or
- 3 (3) any disused tip¹³ which is not at a mine being worked¹⁴ from which minerals are being extracted for sale or further use¹⁵.

Notwithstanding head (1) above¹⁶, 'quarry' does not include:

- 4 (a) an excavation or system of excavations made for the purpose of or in connection with the extraction of such minerals or products of minerals where the exclusive purpose of that extraction is to enable the minerals or products of minerals so extracted to be used for the purpose of carrying out any building, civil engineering or engineering construction work on the site at which the extraction has taken place¹⁷;
- 5 (b) a public road¹⁸; or
- 6 (c) a railway line which is exclusively under the control of a railway company¹⁹, or a person who carries on an undertaking which consists of, or the main activity or one of the main activities of which consists of, the management of a network²⁰.

For these purposes, the following are deemed to form part of a quarry:

- 7 (i) so much of the surface (including buildings, structures and works thereon) surrounding or adjacent to the quarry as is occupied for the purpose of, or in connection with: the working of the quarry²¹, the consumption, use, storage or preparation for sale of the minerals or products thereof extracted from the quarry²², or the removal from the quarry of any substance extracted from the quarry²³; and
- 8 (ii) any tip (A) for the time being used in conjunction or connection with the operation of the quarry; or (B) whether or not it is for the time being in use, situated on premises occupied by the operator of the quarry²⁴.

1 *Darvill v Roper* (1855) 3 Drew 294; *Bell v Wilson* (1866) 1 Ch App 303 at 309, CA, per Turner LJ; *Glasgow Corp'n v Farie* (1888) 13 App Cas 657 at 677, HL, per Lord Watson, and at 684 per Lord Herschell (dissenting). See also *Jones v Cwmorthen Slate Co Ltd* (1879) 5 Ex D 93, CA; *Earl of Jersey v Neath Poor Law Union Guardians* (1889) 22 QBD 555, CA; *Rogers (Inspector of Taxes) v Longsdon* [1967] Ch 93, [1966] 2 All ER 49.

2 *Glasgow Corpn v Farie* (1888) 13 App Cas 657 at 678, HL, per Lord Watson, and at 684 per Lord Herschell (dissenting); *Sim v Evans* (1875) 23 WR 730; *Jones v Cwmorthen Slate Co Ltd* (1879) 5 Ex D 93, CA; *Midland Rly Co and Kettering, Thrapston and Huntingdon Rly Co v Robinson* (1889) 15 App Cas 19 at 26, HL, per Lord Herschell, and at 33 per Lord Watson; *South Staffordshire Mines Drainage Comrs v Elwell & Sons* (1927) 97 LJB 13 at 15, CA, per Bankes LJ; *South Staffordshire Mines Drainage Comrs v Grosvenor Colliery Co Ltd* (1961) 125 JP 484 at 485, CA, per Sellers LJ; *Rogers (Inspector of Taxes) v Longsdon* [1967] Ch 93 at 113, [1966] 2 All ER 49 at 59 per Stamp J; *NSW Associated Blue-Metal Quarries Ltd v Federal Comr of Taxation* (1956) 94 CLR 509, [1956] ALR 286, Aust HC. For the meaning of 'mine' see PARA 5 ante; and for the meaning of 'minerals' see PARA 12 post.

3 See PARA 5 text and note 3 ante.

4 *Glasgow Corpn v Farie* (1888) 13 App Cas 657 at 684, HL, per Lord Herschell (dissenting).

5 *Sim v Evans* (1875) 23 WR 730 (a decision under the Metalliferous Mines Regulation Act 1872 (repealed)).

6 *Scott v Midland Rly Co* [1901] 1 KB 317, DC (gravel or sand pit); *Scott v Midland Rly Co* (1897) 61 JP 358, DC (furnace slag), both decisions under the Quarries Act 1894 (repealed); and see *Airdrie, Coatbridge and District Water Trustees v Lanarkshire Assessor* 1908 SC 596, a decision under the Lands Valuation (Scotland) Act 1854 (repealed).

7 Ie the Quarries Regulations 1999, SI 1999/2024 (as amended). As to the scope and application of the Quarries Regulations 1999, SI/2024 (as amended) see PARA 511 post.

8 'Excavation' means any place at the quarry where minerals are or have been extracted and includes the ground, faces or sides of the quarry and any other incline; and 'minerals' includes stone, slate, clay, gravel, sand and other natural deposits except peat: *ibid* reg 2(1).

9 Ie whether in their natural state or in solution or suspension: see *ibid* reg 3(1)(a).

10 *Ibid* reg 3(1)(a).

11 For this purpose, 'reclamation site' means a site where the extraction of minerals forms part of the process whereby that site is restored for agricultural, industrial or domestic use: see *ibid* reg 3(1)(b).

12 *Ibid* reg 3(1)(b).

13 'Tip' means an accumulation or deposit of any substance at a quarry (whether in a solid or liquid state or in solution or suspension) and includes, but is not limited to, over-burden dumps, backfill, spoil heaps, stock piles and lagoons, and where any wall or other structure retains or confines a tip then it must be deemed to form part of the tip: *ibid* reg 2(1). As to disused tips see PARA 561 et seq post.

14 Ie within the meaning of the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 2(3) (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 748): see the Quarries Regulations 1999, SI 1999/2024, reg 3(1)(c).

15 *Ibid* reg 3(1)(c).

16 Ie *ibid* reg 3(1)(a).

17 *Ibid* reg 3(2)(a).

18 *Ibid* reg 3(2)(b). 'Public road' means a highway maintainable at public expense within the meaning of the Highways Act 1980 s 329 (see HIGHWAYS, STREETS AND BRIDGES): Quarries Regulations 1999, SI 1999/2024, reg 2(1).

19 'Railway company' means any person authorised by an enactment to construct, work or carry on a railway and for the purposes of this definition the expression 'enactment' includes a provision of an order or scheme made under or confirmed by an Act: *ibid* reg 2(1).

20 *Ibid* reg 3(2)(c). 'Network' means a network within the meaning of the Railways Act 1993 s 83(1) (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 82): Quarries Regulations 1999, SI 1999/2024, reg 3(2)(c).

21 *Ibid* reg 3(3)(a)(i).

22 *Ibid* reg 3(3)(a)(ii).

23 Ibid reg 3(3)(a)(iii).

24 Ibid reg 3(3)(b)(i), (ii). For the purposes of the Quarries Regulations 1999, SI 1999/2024 (as amended):

- 5 (1) where a tip is for the time being used in conjunction or connection with the operation of two or more quarries and is situated on premises occupied exclusively by the operator of one of those quarries, it must be treated as forming part of that quarry unless:
 1. (a) the operator of one of the other quarries in conjunction or connection with which the tip is for the time being used has agreed that the tip should be treated as forming part of the quarry of which he is the operator (reg 3(4)(a)(i)); and
1
 2. (b) notice to that effect has been given to the Health and Safety Executive by that operator (reg 3(4)(a)(ii));
2
- 6 (2) where a tip is for the time being used in conjunction or connection with the operation of two or more quarries and is situated on premises occupied jointly by the operators of two or more of those quarries, the last-named operators must, for the purposes of the Quarries Regulations 1999, SI 1999/2024 (as amended), be treated as being in joint and several control of that tip and as being jointly and severally responsible for it unless:
 3. (a) the said operators have agreed that one of their number should be treated as being in control of that tip and responsible for it (reg 3(4)(b)(i)); and
3
 4. (b) notice to that effect has been given to the Health and Safety Executive by the operator who is to be so treated (reg 3(4)(b)(ii)).
4

Upon receipt of a notice given in accordance with head (1)(b) or head (2)(b) supra, the tip named in that notice is to be treated as forming part of the quarry specified in the notice: reg 3(5). As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

UPDATE

5-6 Meaning of 'mine', Meaning of quarry

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(1) TERMINOLOGY/(i) Mines and Quarries/7. Open and new mines and quarries.

7. Open and new mines and quarries.

Whether a mine is open or not is no longer a question of much (if any) practical importance. A mine¹ is said to be open when it has been devoted by a person lawfully entitled to do so to the purpose of making a profit by the working and sale of the minerals in it². The question what is an open mine derives such importance as it has from its bearing upon the rights of limited owners³. The mine, if open at the time of the creation of limited estates, remains an open mine⁴. Under the old law⁵ a mine might be opened, during the subsistence of the limitations under which such estates arose, either by a person having an estate enabling him to do so, as a tenant in tail in possession⁶, or a person specially empowered, as a trustee having power to work⁷ or lease mines⁸.

The rules which apply to mines have been held to apply similarly to quarries⁹ and other open workings, such as brickfields¹⁰ or gravel pits¹¹.

1 For the meaning of 'mine' see PARA 5 ante.

2 *Elias v Griffith* (1878) 8 ChD 521 at 532, CA; affd on another point sub nom *Elias v Snowdon Slate Quarries Co* (1879) 4 App Cas 454, HL. For the meaning of 'minerals' see PARA 12 post.

3 See PARAS 292-293, 371 et seq post. As to the rights of limited owners generally see SETTLEMENTS.

4 *Greville-Nugent v Mackenzie* [1900] AC 83, HL. Mines the working of which has been for a time suspended because of a diminished price to be got for the mineral or some other temporary cause are to be regarded as opened mines: *Greville-Nugent v Mackenzie* supra at 90. See also PARA 10 post. As to the statutory power to grant mining leases see PARA 292 post; and SETTLEMENTS.

5 As to the present law see PARA 285 post; and SETTLEMENTS.

6 *Clavering v Clavering* (1726) 2 P Wms 388.

7 *Chaytor v Trotter* (1902) 87 LT 33, CA.

8 *Daly v Beckett* (1857) 24 Beav 114; *Earl Cowley v Wellesley* (1866) LR 1 Eq 656; *Campbell v Wardlaw* (1883) 8 App Cas 641, HL.

9 *Elias v Griffith* (1878) 8 ChD 521 at 532, CA; affd on another point sub nom *Elias v Snowdon Slate Quarries Co* (1879) 4 App Cas 454, HL. See also now the Quarries Regulations 1999, SI 1999/2024 (as amended); and PARA 511 post.

10 *Earl Cowley v Wellesley* (1866) LR 1 Eq 656; *Miller v Miller* (1872) LR 13 Eq 263.

11 *Huntley v Russell* (1849) 13 QB 572. As to peat see *Coppinger v Gubbins* (1846) 3 Jo & Lat 397.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(1) TERMINOLOGY/(i) Mines and Quarries/8. What is an open mine.

8. What is an open mine.

Whether a mine is open or not is a question of intention¹, which may be evidenced in various ways. If the mine has been worked with a view to profit it is open, even if no profit has in fact been made². Sale of the products is not a necessary criterion of profit: use of the products (otherwise than for some restricted purpose) is sufficient³. It is open if it is included in a lease, reserving a share of profits, under which the lessee has worked⁴, or in an agreement for a lease where a dead rent has become payable and workings are approaching by instroke⁵, or if a proper working shaft has been sunk to the seam⁶, even if no coal is in fact hewn⁷.

1 *Chaytor v Trotter* (1902) 87 LT 33, CA. For the meaning of 'mine' see PARA 5 ante.

2 *Elias v Griffith* (1878) 8 ChD 521, CA; affd on appeal sub nom *Elias v Snowdon Slate Quarries Co* (1879) 4 App Cas 454, HL.

3 *Elias v Snowdon Slate Quarries Co* (1879) 4 App Cas 454 at 465, HL, per Lord Selborne. For examples of workings for a restricted purpose see PARA 9 text to note 4 post.

4 *Elias v Snowdon Slate Quarries Co* (1879) 4 App Cas 454, HL; *Dashwood v Magniac* [1891] 3 Ch 306 at 327-328, CA, per Chitty J, and at 360-361 per Bowen LJ.

5 *Re Kemeys-Tynte, Kemeys-Tynte v Kemeys-Tynte* [1892] 2 Ch 211; and see *Stoughton v Leigh* (1808) 1 Taunt 402. For the meaning of 'instroke' see PARA 330 post.

6 *Chaytor v Trotter* (1902) 87 LT 33, CA.

7 *Re Morgan, Vachell v Morgan* [1914] 1 Ch 910, CA.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(1) TERMINOLOGY/(i) Mines and Quarries/9. Workings which do not render a mine open.

9. Workings which do not render a mine open.

It is not every working that will render a mine open¹. Thus the mine is not open if the working is wrongful², or purely experimental³, or for a restricted purpose, as for fuel or to repair a particular tenement⁴. The grant of a limited right, such as a grant to tenants of the right to scrape or scour for coal on the outcrop, is also insufficient⁵, and so are workings by a person having a statutory right independently of the owner⁶. As a rule, the existence of an open mine on one part of an estate does not make the other mines open mines⁷, especially where the estate is severed by land in different ownership⁸.

1 For the meaning of 'mine' see PARA 5 ante.

2 *Bartlett v Phillips* (1859) 4 De G & J 414; *Ecclesiastical Comrs v Wodehouse* [1895] 1 Ch 552.

3 *Chaytor v Trotter* (1902) 87 LT 33, CA.

4 *Elias v Snowdon Slate Quarries Co* (1879) 4 App Cas 454, HL; and see *Campbell v Wardlaw* (1883) 8 App Cas 641 at 645, HL, per Lord Blackburn.

5 *Stepney v Chambers* [1866] WN 401.

6 *Huntley v Russell* (1849) 13 QB 572 (highway surveyors taking gravel for public purposes); and cf *Ross v Adcock* (1868) LR 3 CP 655 at 669, 670.

7 *Campbell v Wardlaw* (1883) 8 App Cas 641, HL.

8 *Re Maynard's Settled Estate* [1899] 2 Ch 347; and see *Lloyd-Jones v Clark-Lloyd* [1919] 1 Ch 424, CA.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(1) TERMINOLOGY/(i) Mines and Quarries/10. When a mine ceases to be open.

10. When a mine ceases to be open.

It is a question of degree whether a mine which has once been opened but which has not been worked for a time ceases to be an open mine¹. Interruption of working for a moderate period will not necessarily be treated as evidence of abandonment so as to prevent the mine remaining open². Nor will the cessation of working for a longer period where the cessation is due to an unremunerative market for the produce³. But if a mine has not been worked for a very long period, for example a century, or has been abandoned for the benefit of the inheritance, it ceases to be an open mine⁴.

1 *Bagot v Bagot, Legge v Legge* (1863) 32 Beav 509; *Greville-Nugent v Mackenzie* [1900] AC 83, HL; and see *Viner v Vaughan* (1840) 2 Beav 466. For the meaning of 'mine' see PARA 5 ante.

2 *Re Chaytor* [1900] 2 Ch 804, where a mine was still held to be open after workings had been interrupted for 17 years.

3 *Bagot v Bagot, Legge v Legge* (1863) 32 Beav 509.

4 *Bagot v Bagot, Legge v Legge* (1863) 32 Beav 509.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(1) TERMINOLOGY/(i) Mines and Quarries/11. Opening of new mines.

11. Opening of new mines.

When a mine is open, the sinking of a new pit in the same vein or seam, or breaking ground in a new place in the same rock, is not necessarily opening a new mine¹. However, the sinking of a shaft for the purpose of working a mineral not worked in an existing open mine is an opening of a new mine².

1 *Clavering v Clavering* (1726) 2 P Wms 388; *Spencer v Scurr* (1862) 31 Beav 334; *Bagot v Bagot*, *Legge v Legge* (1863) 32 Beav 509; *Earl Cowley v Wellesley* (1866) LR 1 Eq 656 at 659; *Elias v Snowdon Slate Quarries Co* (1879) 4 App Cas 454, HL. For the meaning of 'mine' see PARA 5 ante.

2 *Spencer v Scurr* (1862) 31 Beav 334. For the meaning of 'minerals' see PARA 12 post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(1) TERMINOLOGY/(ii) Minerals/12. Meaning of 'minerals'.

(ii) Minerals

12. Meaning of 'minerals'.

'Minerals' admits of a variety of meanings, and has no general definition¹. Whether in a particular case a substance is a mineral or not is primarily a question of fact². The test is what 'minerals' meant at the date of the instrument concerned³ in the vernacular of the mining world, the commercial world and among landowners⁴, and in case of conflict this meaning must prevail over the purely scientific meaning⁵. Nevertheless, 'minerals' is capable of limitation or expansion according to the intention with which it is used⁶, and this intention may be inferred from the document itself or from consideration of the circumstances in which it was made⁷. In the case of the document itself, the inference may be drawn from a comparison with other parts of the document⁸ or from the immediate context⁹. In a reservation of minerals out of a grant of land, the rules of construction describing the substances reserved are the same whether the grant is made by instrument between the parties or by statute¹⁰. In looking at the circumstances in which the document was made, regard must be had to the relative position of the parties interested, and to the substance of the transaction or arrangement which the instrument or statute embodies¹¹. The fact that the owner of minerals is not entitled to get them by surface workings is not sufficient to restrict the meaning of 'minerals'¹²; but the meaning may be restricted by proof of a custom the existence of which is incompatible with the *prima facie* meaning¹³, or by particular circumstances showing that not all the minerals were intended to be referred to¹⁴.

In considering liquid and fugacious substances, such as oil or natural gas, cases which dealt with solid substances should be approached with some caution because different considerations may apply¹⁵.

'Mines' is frequently found in collocation with 'minerals', as in the term 'mines and minerals' or its equivalents¹⁶. As so used 'mines' does not narrow the meaning of 'minerals', and the term is wide enough *prima facie* to include even those minerals which can only be got by surface workings¹⁷. 'Minerals' does not comprise the space occupied or formerly occupied by mineral substances, even though 'mines' may do so¹⁸.

'Minerals' has been expressly defined for the purposes of certain statutes, for example the Mining Industry Act 1926¹⁹, the Atomic Energy Act 1946²⁰, the Mines and Quarries Act 1954²¹, the Opencast Coal Act 1958²², the Mines (Working Facilities and Support) Act 1966²³, the Income and Corporation Taxes Act 1988²⁴, and the Town and Country Planning Act 1990²⁵. 'Mines and minerals' has been defined for the purposes of the property legislation of 1925²⁶. 'Hard mineral resources' has been defined for the purposes of the Deep Sea Mining (Temporary Provisions) Act 1981²⁷.

1 *North British Rly Co v Budhill Coal and Sandstone Co* [1910] AC 116 at 130, HL, per Lord Gorell; *Caledonian Rly Co v Glenboig Union Fireclay Co* [1911] AC 290 at 299, HL, per Lord Loreburn LC; *Earl of Lonsdale v A-G* [1982] 3 All ER 579 at 609, [1982] 1 WLR 887 at 924 per Slade J.

2 *Great Western Rly Co v Carpalla United China Clay Co Ltd* [1910] AC 83, HL; *Staples v Young* [1908] 1 IR 135, Ir CA; *George Skey & Co Ltd v Parsons* (1909) 101 LT 103; *Symington v Caledonian Rly Co* [1912] AC 87, HL (and see also (1913) 2 SLT 294 (further hearing)); *Waring v Foden* [1932] 1 Ch 276, CA; *A-G for Isle of Man v Moore* [1938] 3 All ER 263 at 267, PC. Expert evidence is therefore admissible on the issue: *Waring v Foden* supra at 302 per Romer LJ; *A-G for Isle of Man v Moore* supra at 267, 268; and see CUSTOM AND USAGE.

3 Evidence of the vernacular meaning at the date of trial may justify the assumption that there was a similar vernacular usage at the date of the grant: *Caledonian Rly Co v Glenboig Union Fireclay Co* [1911] AC 290 at 299, HL, per Lord Loreburn LC; *Earl of Lonsdale v A-G* [1982] 3 All ER 579 at 609, [1982] 1 WLR 887 at 924 per Slade J. As to the construction of instruments according to contemporary usage see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARAS 204, 207.

4 This criterion was first suggested by James LJ in *Hext v Gill* (1872) 7 Ch App 699 at 719, but at 712 Mellish LJ formulated the test of whether the substance could be worked for the purpose of profit (cf para 8 text and notes 2, 3 ante). The test of Mellish LJ as reported in 7 Ch App at 712 omits, perhaps because of a transcription error, a material passage which appears in other reports of *Hext v Gill* in 41 LJ Ch 761 at 762, 27 LT 291 at 295 and 20 WR 957 at 960; but there seems no indication that the omission has been noticed in any subsequent case. In any event there is a substantial weight of authority to show that the criterion suggested by James LJ is to be preferred: see *Glasgow Corp v Farie* (1888) 13 App Cas 657, HL; *Re Todd, Birleston & Co v North Eastern Rly Co* [1903] 1 KB 603, 606, 607, CA, per the Earl of Halsbury LC; *North British Rly Co v Budhill Coal and Sandstone Co* [1910] AC 116, HL; *Caledonian Rly Co v Glenboig Union Fireclay Co* [1911] AC 290, HL; *Waring v Foden* [1932] 1 Ch 276, CA; *A-G for Isle of Man v Moore* [1938] 3 All ER 263 at 267, PC; *Borys v Canadian Pacific Rly Co* [1953] AC 217 at 223, [1953] 1 All ER 451 at 455, PC; *Earl of Lonsdale v A-G* [1982] 3 All ER 579 at 609, [1982] 1 WLR 887 at 925 per Slade J. Nevertheless, the purpose of profit may still have some bearing: see *North British Rly Co v Budhill Coal and Sandstone Co* supra at 132 per Lord Gorell; *O'Callaghan v Elliott* [1966] 1 QB 601 at 608, [1965] 3 All ER 111 at 113, CA, per Lord Denning MR; *Earl of Lonsdale v A-G* supra at 609 and 925 per Slade J. Similarly, the question whether the substance concerned has any rare or exceptional quality or value, as distinct from being part of the ordinary soil, may also be relevant: see *North British Rly Co v Budhill Coal and Sandstone Co* supra; *Great Western Rly Co v Carpalla United China Clay Co Ltd* [1910] AC 83, HL; *Caledonian Rly Co v Glenboig Union Fireclay Co* supra; *Symington v Caledonian Rly Co* [1912] AC 87, HL; *Borthwick-Norton v Gavin Paul & Sons* 1947 SC 659; *O'Callaghan v Elliott* supra; and *Earl of Lonsdale v A-G* supra.

5 *Borys v Canadian Pacific Rly Co* [1953] AC 217 at 223, [1953] 1 All ER 451 at 455, PC.

6 *Glasgow Corp v Farie* (1888) 13 App Cas 657 at 675, HL, per Lord Watson. The test of intention is objective: *Earl of Lonsdale v A-G* [1982] 3 All ER 579 at 610, [1982] 1 WLR 887 at 925 per Slade J.

7 See *Commonwealth of Australia v Hazeldell Ltd* [1921] 2 AC 373, PC; *Earl of Lonsdale v A-G* [1982] 3 All ER 579 at 609, [1982] 1 WLR 887 at 925 per Slade J.

8 *Wainman v Earl of Rosse* (1848) 2 Exch 800.

9 *A-G for Isle of Man v Mylchreest* (1879) 4 App Cas 294, PC; *Barnard-Argue-Roth-Stearns Oil and Gas Co Ltd v Farquharson* [1912] AC 864, PC.

10 *North British Rly Co v Budhill Coal and Sandstone Co* [1910] AC 116 at 127, HL, per Lord Loreburn LC, and at 138 per Lord Shaw of Dunfermline; *Great Western Rly Co v Carpalla United China Clay Co Ltd* [1910] AC 83, HL; *Glasgow Corp v Farie* (1888) 13 App Cas 657 at 672, HL, per Lord Halsbury LC; *Waring v Foden* [1932] 1 Ch 276. It is submitted that the dicta to the contrary of Lord Herschell in *Midland Rly Co and Kettering, Thrapston and Huntingdon Rly Co v Robinson* (1889) 15 App Cas 19 at 27, HL, and of Buckley J in *Great Western Rly Co v Blades* [1901] 2 Ch 624 at 632 do not represent the law: see *Waring v Foden* supra at 288 per Lord Hanworth MR.

11 *Glasgow Corp v Farie* (1888) 13 App Cas 657 at 675, HL, per Lord Watson; *Waring v Foden* [1932] 1 Ch 276, CA. For the meaning of 'minerals' in building contracts see BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS vol 4(3) (Reissue) PARA 36.

12 *Bell v Wilson* (1866) 1 Ch App 303; *Hext v Gill* (1872) 7 Ch App 699; cf *Earl of Lonsdale v A-G* [1982] 3 All ER 579 at 609, [1982] 1 WLR 887 at 924.

13 *A-G for Isle of Man v Mylchreest* (1879) 4 App Cas 294, PC; *Tucker v Linger* (1882) 21 ChD 18, CA (on appeal) (1883) 8 App Cas 508, HL).

14 *Darvill v Roper* (1855) 3 Drew 294.

15 *Earl of Lonsdale v A-G* [1982] 3 All ER 579 at 610, [1982] 1 WLR 887 at 925 per Slade J.

16 Eg the term 'mines of coal, ironstone, slate or other minerals': see the Railways Clauses Consolidation Act 1845 s 77; the Acquisition of Land Act 1981 s 3, Sch 2 para 1(2); the Water Industry Act 1991 s 188, Sch 14 para 7(1); the Water Resources Act 1991 s 182, Sch 23 para 7(1) (amended by the Environment Act 1995 s 120(1), Sch 22 para 128); and the statutory definitions referred to in notes 19-27 infra. For the meaning of 'mine' see PARA 5 ante.

17 *Hext v Gill* (1872) 7 Ch App 699; *Midland Rly Co v Haunchwood Brick and Tile Co* (1882) 20 ChD 552; *Glasgow Corpn v Farie* (1888) 13 App Cas 657 at 690, HL, per Lord Macnaghten; *Midland Rly Co and Kettering, Thrapston and Huntingdon Rly Co v Robinson* (1889) 15 App Cas 19, HL; *Great Western Rly Co v Carpalla United China Clay Co Ltd* [1910] AC 83, HL; cf *Earl of Lonsdale v A-G* [1982] 3 All ER 579 at 609, [1982] 1 WLR 887 at 924.

18 *Ramsay v Blair* (1876) 1 App Cas 701, HL; *Ballacorkish Silver, Lead and Copper Mining Co v Harrison* (1873) LR 5 PC 49; and see *Batten Pool v Kennedy* [1907] 1 Ch 256. See also PARA 5 text to note 11 ante.

19 For the purposes of the Mining Industry Act 1926 s 23(1) (as amended), 'minerals' includes petroleum within the meaning of the Petroleum Act 1998 (ss 1-9) (see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1626); Mining Industry Act 1926 s 23(6) (added by the Petroleum Act 1998 s 50, Sch 4 para 1). The Mining Industry Act 1926 s 23(1) (as amended) imposes on persons sinking bore holes for the purpose of searching for or getting minerals obligations to give certain facilities to the Natural Environment Research Council: see PARA 358 post.

20 'Minerals' includes all substances obtained or obtainable from the soil by underground or surface working: Atomic Energy Act 1946 s 18(1); and see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1366.

21 'Minerals' includes stone, slate, clay, gravel, sand and other natural deposits except peat: Mines and Quarries Act 1954 s 182(1); and see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 343.

22 'Minerals' includes stone, slate, clay, gravel, sand and similar deposits: Opencast Coal Act 1958 s 51(1); and see PARA 425 note 3 post.

23 'Minerals' includes all minerals and substances in or under land obtainable by underground or by surface working: see the Mines (Working Facilities and Support) Act 1966 s 14(1).

24 In relation to the taxation of mineral royalties, 'minerals' includes all minerals and substances in or under land which are ordinarily worked for removal by underground or surface working, but excluding water, peat, topsoil and vegetation: Income and Corporation Taxes Act 1988 s 122(6); and see INCOME TAXATION vol 23(1) (Reissue) PARA 131.

25 'Minerals' includes all substances of a kind ordinarily worked for removal by underground or surface working, except it does not include peat cut for purposes other than sale: Town and Country Planning Act 1990 s 336(1) (amended by the Planning and Compensation Act 1991 s 21, Sch 1 para 12(c)); and see PARA 355 note 8 post; and TOWN AND COUNTRY PLANNING vol 46(1)(Reissue) PARA 16.

26 'Mines and minerals' includes any strata or seam of minerals or substances in or under any land and powers of working and getting the same: see the Law of Property Act 1925 s 205(1)(ix); the Trustee Act 1925 s 68(6) (both amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(2), Sch 4); and the Land Registration Act 2002 s 132(1). 'Mines and minerals' means mines and minerals whether already opened or in work or not, and includes all minerals and substances in, on, or under the land obtainable by underground or by surface working: see the Settled Land Act 1925 s 117(1)(xv); and the Universities and College Estates Act 1925 s 43(vii) (amended by the University and College Estates Act 1964 s 4(1)).

27 'Hard mineral resources' means deposits of nodules containing (in quantities greater than trace) at least one of the following elements: manganese, nickel, cobalt, copper, phosphorus and molybdenum: Deep Sea Mining (Temporary Provisions) Act 1981 s 1(6); and see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 175.

UPDATE

12 Meaning of 'minerals'

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(1) TERMINOLOGY/(ii) Minerals/13. Particular minerals.

13. Particular minerals.

The numerous cases in which specific substances have been decided or assumed to be or not to be minerals must be considered¹ as decisions on the particular facts². Thus in particular circumstances the following substances have been held or assumed to be minerals: asphalt³; basalt⁴; bog-earth⁵; brick-clay⁶; brine⁷; calc spar and calc (barytes)⁸; clay, whether common⁹, china¹⁰, London¹¹ or terra cotta¹²; copper¹³; felsite¹⁴; fireclay¹⁵; freestone¹⁶; gravel¹⁷; granite¹⁸; gypsum¹⁹; ironstone²⁰; kieselguhr (diatomite)²¹; lead²²; limestone²³; loam²⁴; marble²⁵; marl²⁶; peat-earth²⁷; petroleum and natural gas²⁸; pitch²⁹; salt³⁰; sand³¹; sandstone³²; shale³³; stone³⁴; tin³⁵; and whinstone³⁶.

On the other hand, the following substances, which include some of those already listed above, have been held or assumed in particular circumstances not to be minerals: brick-earth (although described as valuable)³⁷; clay in the popular sense³⁸; clay of great thickness³⁹; freestone⁴⁰; furnace slag⁴¹; gravel⁴²; limestone⁴³; natural gas⁴⁴; oil⁴⁵; oil shale⁴⁶; salt (obtained from lime)⁴⁷; sand⁴⁸; sandstone⁴⁹; stone⁵⁰; and tap-cinder (obtained in the manufacture of pig-iron)⁵¹.

1 le for the reasons stated in PARA 12 ante.

2 In some cases the courts, in formulating the issues of fact, have adopted the test of profit arrived at by Mellish LJ in *Hext v Gill* (1872) 7 Ch App 699 at 712. It is submitted that in view of the weight of authority against this test (see PARA 12 note 4 ante) such cases must be treated with caution, even on their facts. Substances which, on the test of profit, have been held or stated to be minerals include brick-clay (*Earl of Jersey v Neath Poor Law Union Guardians* (1889) 22 QBD 555, CA; *Shaftesbury v Wallace* [1897] 1 IR 381); brick-earth (*Tucker v Linger* (1882) 21 ChD 18 at 36, CA, per Jessel MR (on appeal (1883) 8 App Cas 508, HL); *Robinson v Milne* (1884) 53 LJ Ch 1070); clay (*Loosemore v Tiverton and North Devon Rly Co* (1882) 22 ChD 25 at 42, 43 per Fry J); china clay (*Hext v Gill* supra at 712 per Mellish LJ); coal (*Johnstone v Crompton & Co* [1899] 2 Ch 190); coprolites (*A-G v Tomline* (1877) 5 ChD 750 at 762 per Fry J; cf *Dant v Moore* (1863) 9 LT 381); flints under the surface (*Tucker v Linger* (1882) 21 ChD 18, CA; on appeal (1883) 8 App Cas 508 at 512, HL, per Lord Blackburn); limestone (*Fishbourne v Hamilton* (1890) 25 LR Ir 483); red rock (*Johnstone v Crompton & Co* [1899] 2 Ch 190); and sand (*Tucker v Linger* (1882) 21 ChD 18 at 36, CA, per Jessel MR; on appeal (1883) 8 App Cas 508, HL). Substances which, on that test, have been held or assumed not to be minerals include blue brick clay (*Great Western Rly Co v Blades* [1901] 2 Ch 624); clay and sandstone (*George Skey & Co Ltd v Parsons* (1909) 101 LT 103); flints, dug up in the ordinary course of ploughing (*Tucker v Linger* (1882) 21 ChD 18 at 36, CA, per Jessel MR (but see on appeal (1883) 8 App Cas 508, HL)); and sand (*Staples v Young* [1908] 1 IR 135, Ir CA).

3 *Trinidad Asphalt Co v Ambard* [1899] AC 594 at 602, PC.

4 *Re Woodside's Estate* [1929] NI 75, NI CA.

5 *Earl Cowley v Wellesley* (1866) as reported in 35 Beav 635.

6 *Marquis of Salisbury v Gladstone* (1860) 6 H & N 123 at 127, Ex Ch, per Wightman J (on appeal (1861) 9 HL Cas 692); *Midland Rly Co v Miles* (1886) 33 ChD 632 at 642 per Stirling J.

7 *A-G v Salt Union Ltd* [1917] 2 KB 488.

8 *Stokes v Arkwright* (1897) 66 LJQB 845, DC.

9 *Midland Rly Co v Haunchwood Brick and Tile Co* (1882) 20 ChD 552.

10 *Great Western Rly Co v Carpalla United China Clay Co Ltd* [1910] AC 83, HL.

11 *Errington v Metropolitan District Rly Co* (1882) 19 ChD 559 at 571, CA, per Jessel MR.

12 *Ruabon Brick and Terra Cotta Co v Great Western Rly Co* [1893] 1 Ch 427 at 463, CA, per A L Smith LJ.

- 13 *North British Rly Co v Budhill Coal and Sandstone Co* [1910] AC 116 at 133, HL, per Lord Gorell; *Bishop of Winchester v Knight* (1717) 1 P Wms 406.
- 14 *Anstruther's Trustees v IRC* 1912 SC 1165.
- 15 *Caledonian Rly Co v Glenboig Union Fireclay Co* [1911] AC 290, HL; *Midland Rly Co v Checkley* (1867) LR 4 Eq 19.
- 16 *Bell v Wilson* (1866) 1 Ch App 303; *Mawson v Fletcher* (1870) 6 Ch App 91 at 95 per Mellish LJ; *Glasgow and South Western Rly Co v Bain* (1893) 21 R 134, Ct of Sess; *Symington v Caledonian Rly Co* [1912] AC 87, HL (and see (1913) 2 SLT 294 (further hearing)); but see the text and note 40 infra.
- 17 *Earl Cowley v Wellesley* (1866) LR 1 Eq 656 at 659 per Lord Romilly MR; *Midland Rly Co v Checkley* (1867) LR 4 Eq 19; *Errington v Metropolitan District Rly Co* (1882) 19 ChD 559 at 571, CA, per Jessel MR; *Scott v Midland Rly Co* [1901] 1 KB 317, DC.
- 18 *A-G v Welsh Granite Co* (1887) 35 WR 617, CA; *Anstruther's Trustees v IRC* 1912 SC 1165.
- 19 *General Accident Fire and Life Assurance Corp'n Ltd v British Gypsum Ltd* [1967] 3 All ER 40, [1967] 1 WLR 1215.
- 20 *Midland Rly Co and Kettering, Thrapston and Huntingdon Rly Co v Robinson* (1889) 15 App Cas 19, HL; *Midland Rly Co v Checkley* (1867) LR 4 Eq 19.
- 21 *Re Chichester-Clark's Estate* [1937] NI 98.
- 22 *North British Rly Co v Budhill Coal and Sandstone Co* [1910] AC 116 at 133, HL, per Lord Gorell.
- 23 *Midland Rly Co v Checkley* (1867) LR 4 Eq 19; *Mawson v Fletcher* (1870) 6 Ch App 91 at 95 per Mellish LJ; *Dixon v Caledonian and Glasgow and South Western Railway Companies* (1880) 5 App Cas 820, HL (cf *North British Rly Co v Budhill Coal and Sandstone Co* [1910] AC 116 at 124, HL); *Midland Rly Co and Kettering, Thrapston and Huntingdon Rly Co v Robinson* (1889) 15 App Cas 19, HL; *Edinburgh and District Water Trustees v Clippens Oil Co* (1898) 25 R 504, Ct of Sess; and see *Commonwealth of Australia v Hazeldell Ltd* [1921] 2 AC 373, PC. See also the text and note 43 infra.
- 24 *Earl Cowley v Wellesley* (1866) as reported in 35 Beav 635.
- 25 *Midland Rly Co v Checkley* (1867) LR 4 Eq 19 at 25 per Lord Romilly MR.
- 26 *Midland Rly Co v Checkley* (1867) as reported in 36 LJCh 380 at 382 per Lord Romilly MR.
- 27 *Earl Cowley v Wellesley* (1866) as reported in 35 Beav 635.
- 28 *Knight Sugar Co Ltd v Alberta Rly and Irrigation Co* [1938] 1 All ER 266, PC; and see *Borys v Canadian Pacific Rly Co* [1953] AC 217, [1953] 1 All ER 451, PC; *Ontario Natural Gas Co v Smart* (1890) 19 OR 591. See also the text and note 44 infra.
- 29 *Trinidad Asphalt Co v Ambard* [1899] AC 594, PC.
- 30 *North British Rly Co v Budhill Coal and Sandstone Co* [1910] AC 116 at 133, HL, per Lord Gorell.
- 31 *Hanmer v Chance* (1864) 11 LT 667 at 669, 670 (on appeal (1865) 4 De G J & Sm 626); *Earl Cowley v Wellesley* (1866) as reported in 35 Beav 635; *Nisbet Hamilton v North British Rly Co* (1886) 13 R 454, Ct of Sess; *Scott v Midland Rly Co* [1901] 1 KB 317, DC; but see the text and note 48 infra.
- 32 *Greville v Hemingway* (1902) 87 LT 443; but see the text and note 49 infra.
- 33 *Earl of Hopetoun v North British Rly Co* (1893) 20 R 704 at 711, Ct of Sess; *Edinburgh and District Water Trustees v Clippens Oil Co* (1898) 25 R 504, Ct of Sess.
- 34 *Earl of Rosse v Wainman* (1845) 14 M & W 859 (on appeal (1848) 2 Exch 800); *Micklethwait v Winter* (1851) 6 Exch 644; *Nisbet Hamilton v North British Rly Co* (1886) 13 R 454, Ct of Sess; but see the text and note 50 infra.
- 35 *North British Rly Co v Budhill Coal and Sandstone Co* [1910] AC 116 at 133, HL, per Lord Gorell.

- 36 *Forth Bridge Rly Co v Dunfermline Guildry* 1909 SC 493 (cf *North British Rly Co v Budhill Coal and Sandstone Co* [1910] AC 116 at 124, HL, per Lord Loreburn LC); *Anstruther's Trustees v IRC* 1912 SC 1165; and see *Caledonian Rly Co v Symington* (1913) 2 SLT 294 at 305 per Lord Cullen.
- 37 *Church v Inclosure Comrs* (1862) 11 CBNS 664; *Re Todd, Birleston & Co and North Eastern Rly Co* [1903] 1 KB 603, CA.
- 38 *A-G for Isle of Man v Mylchreest* (1879) 4 App Cas 294, PC; *Glasgow Corp'n v Farie* (1888) 13 App Cas 657, HL.
- 39 *Re Todd, Birleston & Co and North Eastern Rly Co* [1903] 1 KB 603, CA.
- 40 *Menzies v Earl of Breadalbane and Holland* (1822) 1 Sh Sc App 225; *Hamilton v Bentley* (1841) 3 Duni 1121, Ct of Sess; but see the text and note 16 supra.
- 41 *Scott v Midland Rly Co* (1897) 13 TLR 398.
- 42 *Waring v Foden* [1932] 1 Ch 276, CA.
- 43 *Darvill v Roper* (1855) 3 Drew 294; *Brown v Chadwick* (1857) 7 ICLR 101; *Countess of Listowel v Gibbings* (1858) 9 ICLR 223; but see the text and note 23 supra.
- 44 *Barnard-Argue-Roth-Stearns Oil and Gas Co Ltd v Farquharson* [1912] AC 864, PC; *Earl of Lonsdale v A-G* [1982] 3 All ER 579, [1982] 1 WLR 887; but see the text and note 28 supra.
- 45 *Earl of Lonsdale v A-G* [1982] 3 All ER 579, [1982] 1 WLR 887; but see note 28 supra.
- 46 *Marquis of Linlithgow v North British Rly Co* 1912 SC 1327; affd on other grounds [1914] AC 820, HL.
- 47 *Re Dudley's Settled Estates* (1882) 26 Sol Jo 359.
- 48 *A-G for Isle of Man v Mylchreest* (1879) 4 App Cas 294 at 305, PC; *Waring v Foden* [1932] 1 Ch 276, CA; *Borthwick-Norton v Gavin Paul & Sons* 1947 SC 659; *MacDonald v Inverness-shire Assessor* 1954 SC 89; but see the text and note 31 supra.
- 49 *North British Rly Co v Budhill Coal and Sandstone Co* [1910] AC 116, HL; but see the text and note 32 supra.
- 50 *Nisbet Hamilton v North British Rly Co* (1886) 13 R 454, Ct of Sess; but see the text and note 34 supra.
- 51 *Boileau v Heath* [1898] 2 Ch 301; cf *Elwes v Brigg Gas Co* (1886) 33 ChD 562 at 566-567 per Chitty J.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(1) TERMINOLOGY/(ii) Minerals/14. Onus of proof.

14. Onus of proof.

The onus of proof that a particular substance was, at the date of the document to be construed, or is, at the present day, regarded as a mineral is upon those raising the contention¹, and the court may be justified in assuming that the meaning of 'minerals' at the date of the document in question was the same as it is at the present day unless there is evidence to the contrary². Where, however, there is a contract for sale, the meaning to be applied will be the meaning at the date of the contract, even though a considerable period elapses before the formal conveyance is executed³.

1 *North British Rly Co v Budhill Coal and Sandstone Co* [1910] AC 116 at 134, HL, per Lord Gorell. For the meaning of 'minerals' see PARA 12 ante.

2 *Caledonian Rly Co v Glenboig Union Fireclay Co* [1911] AC 290 at 299, HL, per Lord Loreburn LC; *Earl of Lonsdale v A-G* [1982] 3 All ER 579 at 609, [1982] 1 WLR 887 at 924 per Slade J.

3 *Marquis of Linlithgow v North British Rly Co* 1912 SC 1327; on appeal [1914] AC 820, HL.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(1) TERMINOLOGY/(ii) Minerals/15. Meaning of 'mineral substances'.

15. Meaning of 'mineral substances'.

For all practical purposes 'minerals' and 'mineral substances' are synonymous terms, and the meaning of 'mineral substances' depends on the expressed or implied intention with which the words are used, as much as 'minerals', and accordingly what is said in the authorities as to the meaning of 'minerals'¹ applies with equal force to 'mineral substances'².

1 See PARAS 12-13 ante.

2 *Waring v Foden* [1932] 1 Ch 276, CA.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(1) TERMINOLOGY/(iii) Other Terms/16. Meaning of 'bed', 'seam' and 'vein'.

(iii) Other Terms

16. Meaning of 'bed', 'seam' and 'vein'.

In a legal document, the context may show that the word 'bed' or 'seam', instead of bearing its normal meaning of a layer or member of a series of stratified rocks, is used to designate a deposit consisting of two or more strata of mineral separated by thin layers of other rock, for example shale, as distinguished from any one layer of mineral. In such a case 'vein' is sometimes applied to each of the layers of minerals comprised in the seam¹.

¹ See *Brewer v Rhymney Iron Co* [1910] 1 Ch 766 at 775. See also PARAS 5 note 17 ante, 151 note 7 post. For the meaning of 'minerals' see PARA 12 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(1) TERMINOLOGY/(iii) Other Terms/17. Meaning of 'colliery' and 'coal measures'.

17. Meaning of 'colliery' and 'coal measures'.

'Colliery' includes or may include all contiguous and connected veins¹ and seams of coal which are worked as one concern, together with the workings and machinery necessary for working the minerals² and the business of selling the coal worked³. 'Coal measures' has been held to include those identifiable seams of coal which are or might be worth mining⁴.

1 See PARA 5 note 17 ante.

2 *Hodgson v Field* (1806) 7 East 613 at 620; *Chaytor v Trotter* (1901) 87 LT 33 at 35. For the meaning of 'minerals' see PARA 12 ante.

3 *Gloucester County Bank v Rudry Merthyr Steam and House Coal Colliery Co* [1895] 1 Ch 629, CA.

4 *Earl of Lonsdale v A-G* [1982] 3 All ER 579 at 617, [1982] 1 WLR 887 at 935 per Slade J.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(1) TERMINOLOGY/(iii) Other Terms/18. Meaning of 'pit'.

18. Meaning of 'pit'.

'Pit' has no precise meaning. In reference to underground workings it can denote not only the shafts but also the underground workings to which they give access¹. It can also describe workings on the surface, whether the mineral is taken from the bottom or the sides of the workings².

¹ See *Lofthouse Colliery Ltd v Ogden* [1913] 3 KB 120 at 123, a case decided under the Coal Mines (Minimum Wage) Act 1912 (repealed).

² *Ellis v Bromley Local Board* (1876) 45 LJ Ch 763 at 764, CA, per Mellish LJ. For the meaning of 'minerals' see PARA 12 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(1) TERMINOLOGY/(iii) Other Terms/19. Meaning of 'land' and cognate terms.

19. Meaning of 'land' and cognate terms.

Prima facie 'land' or 'lands' includes everything on or under the surface¹, although this meaning has in some cases been held to have been restricted by the context². 'Soil' is apt to denote the surface and everything above and below it³, but similarly its meaning may be restricted by the context so as to exclude the mines⁴. 'Subsoil' includes everything from the surface to the centre of the earth⁵; and 'surface' may include, in addition to the actual plane surface, all the land except the mines⁶, or the soil overlying the minerals⁷. The word 'stratum' may be used in legislation in a special sense⁸. 'Close'⁹, 'tenement'¹⁰ and 'hereditament'¹¹ are sufficiently wide to include the mines.

1 *Newcomen v Coulson* (1877) 5 ChD 133 at 142, CA; *Shep Touch* (7th Edn) 90; *Campbell v Leach* (1775) Amb 740 at 748; *Railways Comr v Valuer-General* [1974] AC 328 at 351-354, PC. 'Lands' as used in the Railways Clauses Consolidation Act 1845 s 6 (as amended) includes mines: see *Smith v Great Western Rly Co* (1877) 3 App Cas 165, HL. For the meaning of 'land' see further eg LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARAS 1, 17. See also LAND REGISTRATION; REAL PROPERTY.

2 *Thursby v Churchwardens of Briercliffe-with-Extwistle* [1895] AC 32, HL; and see *R v West Ardsley Inhabitants* (1863) 4 B & S 95; *Railways Comr v Valuer-General* [1974] AC 328, PC. 'Land' has been statutorily defined: see eg the Law of Property Act 1925 s 205(1)(ix) (as amended) (see REAL PROPERTY); the Opencast Coal Act 1958 s 51(1) (see PARA 405 post); and the Town and Country Planning Act 1990 s 336(1) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 2) (this definition is applied by the Mineral Workings Act 1951 s 41 (as amended): see PARA 585 note 1 post).

3 *Thomson v St Catharine's College, Cambridge* [1919] AC 468 at 480, HL, per Lord Finlay; and see *Townley v Gibson* (1788) 2 Term Rep 701 at 706; *Pretty v Solly* (1859) 26 Beav 606; *Wakefield v Duke of Buccleuch* (1867) LR 4 Eq 613 (affd (1870) LR 4 HL 377).

4 *Pretty v Solly* (1859) 26 Beav 606; *Wakefield v Duke of Buccleuch* (1867) LR 4 Eq 613 (affd (1870) LR 4 HL 377). For the meaning of 'mine' see PARA 5 ante.

5 *Cox v Glue* (1848) 5 CB 533.

6 *Pountney v Clayton* (1883) 11 QBD 820 at 839, 840, CA.

7 *Humphries v Brogden* (1850) 12 QB 739. For the meaning of 'minerals' see PARA 12 ante.

8 *Railways Comr v Valuer-General* [1974] AC 328 at 353-354, PC (a case on the Valuation of Land Act 1916 (New South Wales)).

9 *Cox v Glue* (1848) 5 CB 533; and see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 161.

10 *Loosemore v Tiverton and North Devon Rly Co* (1882) 22 ChD 25 at 43; on appeal sub nom *Tiverton and North Devon Rly Co v Loosemore* (1884) 9 App Cas 480, HL.

11 *Dunn v Birmingham Canal Co* (1872) LR 8 QB 42 at 48, Ex Ch.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(2) PROPERTY IN MINES; PRESUMPTION OF OWNERSHIP/20. Presumption arising from surface ownership.

(2) PROPERTY IN MINES; PRESUMPTION OF OWNERSHIP

20. Presumption arising from surface ownership.

Mines, quarries and minerals in their original position are part and parcel of the land¹. Consequently the owner of surface land is entitled *prima facie* to everything beneath or within it, down to the centre of the earth². This principle applies even where title to the surface has been acquired by prescription³, but it is subject to exceptions. Thus, at common law, mines of gold and silver belong to the Crown⁴, and by statute unworked coal which was, at the restructuring date, vested in the British Coal Corporation is vested in the Coal Authority⁵. Any minerals removed from land under a compulsory rights order for opencast working of coal become the property of the person entitled to the rights conferred by the order⁶. The property in petroleum existing in its natural condition in strata is vested by statute in the Crown⁷.

If an estate in fee simple in land is acquired by enlargement of a long term, the estate thus acquired includes the mines and minerals which at the time of enlargement had not been severed in right or in fact, or had not been severed or reserved by an Inclosure Act or award⁸.

1 See *Wilkinson v Proud* (1843) 11 M & W 33; *Williamson v Wootton* (1855) 3 Drew 210 at 213; *Kerr v Pawson* (1858) 25 Beav 394 at 406. For the meaning of 'mine' see PARA 5 ante; and for the meaning of 'quarry' see PARA 6 ante. For the meaning of 'minerals' see PARA 12 ante.

2 *Rowbotham v Wilson* (1860) 8 HL Cas 348 at 360 per Lord Wensleydale; *Mines Case* (1567) 1 Plowd 310, Ex Ch; *Lewis v Branthwaite* (1831) 2 B & Ad 437 at 443; *Keyse v Powell* (1853) 2 E & B 132; *Pountney v Clayton* (1883) 11 QBD 820 at 839, CA, per Bowen LJ; and see *Curtis v Daniel* (1808) 10 East 273; *Rowe v Grenfel* (1824) Ry & M 396; *Egremont Burial Board v Egremont Iron Ore Co* (1880) 14 ChD 158.

3 *Seddon v Smith* (1877) 36 LT 168, CA; cf *Walker v Jeffreys* (1842) 1 Hare 341 at 349.

4 *Mines Case* (1567) 1 Plowd 310 at 336. For the law relating to royal mines and prerogative rights of mining see CROWN PROPERTY; CROWN AND ROYAL FAMILY.

5 The ownership of unworked coal which had been alienated by the Coal Commission under the Coal Act 1938 s 17(3) (repealed) did not vest in the National Coal Board (later renamed the British Coal Corporation: see PARA 2 ante) under the Coal Industry Nationalisation Act 1946 s 5, Sch 1 and so did not pass to the Coal Authority under the Coal Industry Act 1994 s 7(3) (see PARA 67 post). Accordingly, such coal remains in private hands.

As to the restructuring date (ie 31 October 1994) see PARA 3 note 9 ante. As to the Coal Commission and the British Coal Corporation see PARAS 2-3 ante; and as to the Coal Authority see PARA 52 et seq post. As to coal in the continental shelf see PARA 26 post.

6 See the Opencast Coal Act 1958 s 10(1) (as amended); and PARA 425 post.

7 See FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1634.

8 See the Law of Property Act 1925 s 153(10); and REAL PROPERTY.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(2) PROPERTY IN MINES; PRESUMPTION OF OWNERSHIP/21. Rebuttal of presumption of ownership.

21. Rebuttal of presumption of ownership.

The ownership in mines¹ under land may be severed from the ownership of the surface², and the mines so severed are a separate tenement, capable of being held for the same estates as other hereditaments³, and with similar incidental rights of ownership⁴. It follows that the presumption arising from surface ownership⁵ may be rebutted by evidence showing that the ownership of the surface has been severed from that of the underlying mines, as by a conveyance or demise of land excepting the mines, or of the mines excepting the surface⁶, or by Act of Parliament⁷. The presumption may also be rebutted by evidence of a long and continuous enjoyment of the mines by persons other than the owners of the surface⁸. The different strata of a parcel of land may likewise be shown to be in different ownership⁹; and proof of ownership of a mine under any parcel of land does not raise any presumption or afford any evidence regarding ownership of the surface¹⁰, or of ownership of the other mines under the same parcel of land¹¹.

1 For the meaning of 'mine' see PARA 5 ante.

2 *Barnes v Mawson* (1813) 1 M & S 77; *Rowe v Grenfel* (1824) Ry & M 396; *Harris v Ryding* (1839) 5 M & W 60; *Cox v Glue* (1848) 5 CB 533; *Humphries v Brogden* (1850) 12 QB 739; *Keyse v Powell* (1853) 2 E & B 132. See further PARA 309 post.

3 *Port v Turton* (1763) 2 Wils 169; *Stoughton v Leigh* (1808) 1 Taunt 402.

4 *Duke of Hamilton v Graham* (1871) LR 2 Sc & Div 166; *Seaman v Vawdrey* (1810) 16 Ves 390 at 392; *Rowbotham v Wilson* (1857) 8 E & B 123, Ex Ch (affd (1860) 8 HL Cas 348). See also PARA 116 post.

5 See PARA 20 ante.

6 *Harris v Ryding* (1839) 5 M & W 60; *Cox v Glue* (1848) 5 CB 533.

7 Eg severance of mines has been effected by numerous Inclosure Acts: see COMMONS vol 13 (2009) PARA 497. See also PARA 313 et seq post.

8 *Rowe v Grenfel* (1824) Ry & M 396; *Cox v Glue* (1848) 5 CB 533; and see CIVIL PROCEDURE vol 11 (2009) PARA 1071.

9 *Cox v Glue* (1848) 5 CB 533.

10 *Tyrwhitt v Wynne* (1819) 2 B & Ald 554.

11 *London and North Western Rly Co v Howley Park Coal and Cannel Co* [1911] 2 Ch 97 at 111, CA, per Cozens-Hardy MR, and at 131 per Buckley LJ; on appeal sub nom *Howley Park Coal and Cannel Co v London and North Western Rly Co* [1913] AC 11, HL.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(2) PROPERTY IN MINES; PRESUMPTION OF OWNERSHIP/22. Ownership of coal.

22. Ownership of coal.

By statute, the fee simple in all coal¹ and mines of coal², with the exception of certain retained interests³ and statutory rights but including certain other property and rights, vested in the Coal Commission on 1 July 1942 and compensation was paid for the interests so acquired⁴. When the coal industry was nationalised⁵ the proprietary rights of the Coal Commission and colliery concerns⁶ (including retained interests) in unworked coal⁷, mines of coal⁸ and in certain associated minerals were transferred to the National Coal Board⁹, which was later renamed the British Coal Corporation¹⁰. On the subsequent restructuring of the coal industry¹¹ the interests of the British Coal Corporation in unworked coal and coal mines were transferred to the Coal Authority¹².

1 For the meaning of 'coal' for these purposes see PARA 1 note 7 ante.

2 For the meaning of 'mine of coal' for these purposes see PARA 1 note 8 ante.

3 As to retained interests see PARA 1 note 9 ante.

4 See the Coal Act 1938 s 3(1) (repealed); and PARA 1 ante.

5 Ie by the Coal Industry Nationalisation Act 1946: see PARA 2 ante.

6 For the meaning of 'colliery concern' see PARA 2 note 7 ante.

7 For the meaning of 'coal' for these purposes see PARA 2 note 5 ante.

8 For the meaning of 'mine of coal' for these purposes see PARA 2 note 6 ante.

9 See the Coal Industry Nationalisation Act 1946 s 5(1), Sch 1 (repealed); and PARA 2 ante.

10 See the Coal Industry Act 1987 s 1 (repealed by the Coal Industry Act 1994 s 67(8), Sch 11 Pt IV as from the dissolution date); and PARA 2 ante. As to the dissolution date see PARAS 3 note 25 ante, 89 post.

11 Ie under the Coal Industry Act 1994: see PARAS 3 ante, 50 et seq post.

12 See *ibid* s 7(3); and PARA 67 post. As to the Coal Authority see PARA 52 et seq post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(2) PROPERTY IN MINES; PRESUMPTION OF OWNERSHIP/23. Profits à prendre affecting minerals.

23. Profits à prendre affecting minerals.

The right to enter upon another person's land and extract minerals¹, as distinguished from the ownership of a stratum of minerals in another person's land², is a profit à prendre³ and may be created by grant, statute or prescription⁴. A common case of a profit à prendre in respect of minerals is a right for freehold tenants of a manor to cut turf⁵ and dig loam, sand and gravel out of the waste⁶.

1 For the meaning of 'minerals' see PARA 12 ante.

2 *Wilkinson v Proud* (1843) 12 LJ Ex 227; *Duke of Sutherland v Heathcote* [1892] 1 Ch 475 at 483, CA.

3 As to profits à prendre generally see EASEMENTS AND PROFITS A PRENDRE.

4 A profit à prendre cannot be claimed by custom, except in certain mining localities and in the case of copyholders claiming the right to a profit à prendre in the waste of the manor which they hold: *Goodman v Saltash Corpn* (1882) 7 App Cas 633 at 648, HL; *Gateward's Case* (1607) 6 Co Rep 59b; *A-G v Mathias* (1858) 4 K & J 579; *Alfred F Beckett Ltd v Lyons* [1967] Ch 449 at 474, [1967] 1 All ER 833 at 846, CA, per Harman LJ, and at 482 and 851 per Winn LJ; and see CUSTOM AND USAGE; EASEMENTS AND PROFITS A PRENDRE. As to acts of ownership supporting the existence of a custom see PARAS 29-30 post. As to customs in particular localities see PARA 586 et seq post.

5 See COMMONS vol 13 (2009) PARAS 566, 569.

6 *Warrick v Queen's College, Oxford* (1871) 6 Ch App 716; *Betts v Thompson* (1871) 6 Ch App 732 at 739; *Heath v Deane* [1905] 2 Ch 86. As to rights of common in the soil see COMMONS vol 13 (2009) PARA 465 et seq.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(2) PROPERTY IN MINES; PRESUMPTION OF OWNERSHIP/24. Mines under highways.

24. Mines under highways.

Prima facie, mines¹ situate beneath a highway are owned by the owners of the land adjoining the highway on either side, the point of division being the centre of the road². The presumption is a deduction from the doctrine that a conveyance of land bounded by a highway passes the soil of a moiety of the highway³. The presumption does not apply in the case of a railway⁴ or canal⁵. Nor does it apply to a road set out under an Inclosure Act; in this case the property in the mines prima facie remains in the lord of the manor⁶.

Statutory protection is accorded to the rights of the owners of mines and minerals under certain highways vested in a highway authority⁷.

1 For the meaning of 'mine' see PARA 5 ante.

2 *Goodtitle d Chester v Alker* (1757) 1 Burr 133; *Baird v Tunbridge Wells Corpn* [1894] 2 QB 867 at 883, CA, per A L Smith LJ (on appeal sub nom *Tunbridge Wells Corpn v Baird* [1896] AC 434, HL); and see HIGHWAYS, STREETS AND BRIDGES.

3 *Chamber Colliery Co Ltd v Rochdale Canal Co* [1895] AC 564 at 584, HL, per Lord Macnaghten. See HIGHWAYS, STREETS AND BRIDGES.

4 *Thompson v Hickman* [1907] 1 Ch 550.

5 *Chamber Colliery Co Ltd v Rochdale Canal Co* [1895] AC 564, HL.

6 *Seddon v Smith* (1877) 36 LT 168, CA. The ownership of the mines is often a question of the construction of the particular Act: see *Poole v Huskinson* (1843) 11 M & W 827; *Haigh v West* [1893] 2 QB 19 at 29, CA; and COMMONS vol 13 (2009) PARA 420.

7 See the Highways Act 1980 s 335, referring to highways vested in a highway authority by virtue of any provision of Pt XII (ss 238-271) (as amended); and HIGHWAYS, STREETS AND BRIDGES. The minerals must be got so as not to damage the road: see *A-G v Conduit Colliery Co* [1895] 1 QB 301, DC. If the road is damaged the measure of damages is the cost of making an equally commodious road: *Lodge Holes Colliery Co Ltd v Wednesbury Corpn* [1908] AC 323, HL. For the meaning of 'minerals' see PARA 12 ante.

UPDATE

24-25 Mines under highways, Mines beneath rivers and seashore

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(2) PROPERTY IN MINES; PRESUMPTION OF OWNERSHIP/25. Mines beneath rivers and seashore.

25. Mines beneath rivers and seashore.

The mines¹ beneath the bed of a non-navigable river belong prima facie to the owners of the adjoining land as owners of the bed of the river². Mines under navigable rivers³, under the shore between low water mark and ordinary high water mark (known as the foreshore)⁴, and under the bed of the sea adjoining the shore⁵ belong, prima facie, to the Crown as the owner of the beds of navigable rivers, of the foreshore and of the sea bed⁶. Mines under the foreshore may, however, be shown to belong to the adjoining owner⁷.

1 For the meaning of 'mine' see PARA 5 ante.

2 *Chamber Colliery Co Ltd v Rochdale Canal Co* [1895] AC 564, HL; and see WATER AND WATERWAYS vol 100 (2009) PARA 74 et seq. As to mineral rights under the Water Industry Act 1991 and the Water Resources Act 1991 see WATER AND WATERWAYS vol 101 (2009) PARA 492 et seq.

3 *Lyon v Fishmongers' Co* (1876) 1 App Cas 662, HL.

4 *Lopez v Andrew* (1826) 3 Man & Ry KB 329n; *A-G v Chambers* (1854) 4 De GM & G 206; *A-G v Emerson* [1891] AC 649 at 654, HL.

5 *A-G v Chambers* (1854) 4 De GM & G 206.

6 See CROWN PROPERTY. The prima facie title of the Crown no longer holds good, however, in the case of foreshores on the coast of Cornwall: see CROWN PROPERTY vol 12(1) (Reissue) PARA 247.

7 *A-G v Hanmer* (1858) 27 LJ Ch 837 (on appeal (1859) 4 De G & J 205); and see *Calmady v Rowe* (1844-48) 6 CB 861; *Lord Advocate v Lord Blantyre* (1879) 4 App Cas 770, HL; *Lord Advocate v Young, North British Rly Co v Young* (1887) 12 App Cas 544, HL; *Lord Advocate v Wemyss* [1900] AC 48, HL; *Constable v Nicholson* (1863) 14 CBNS 230. As to the rights of user of the foreshore granted to persons entitled, in right of or under the Crown, to or to the management of minerals in or under the foreshore or adjacent land managed by the Crown Estate Commissioners see CROWN PROPERTY vol 12(1) (Reissue) PARA 242 et seq.

UPDATE

24-25 Mines under highways, Mines beneath rivers and seashore

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(2) PROPERTY IN MINES; PRESUMPTION OF OWNERSHIP/26. The continental shelf and territorial waters.

26. The continental shelf and territorial waters.

Any rights exercisable by the United Kingdom¹ outside territorial waters² with respect to the sea bed and subsoil and their natural resources, other than coal, are vested by statute in the Crown³. For the purposes of exploiting certain coal under the territorial sea and coal in designated areas⁴ of the continental shelf, various interests and rights are vested by statute in the Coal Authority⁵.

1 For the meaning of 'United Kingdom' see PARA 1 note 1 ante.

2 As to territorial waters see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 121 et seq.

3 Continental Shelf Act 1964 s 1(1). See also CROWN PROPERTY; INTERNATIONAL RELATIONS LAW vol 61 (2010) PARAS 163, 172. As to the registration of offshore installations and safety measures see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1684 et seq.

4 As to certain areas, known as 'designated areas', within which these rights are exercisable see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1636. See also PARA 67 post.

5 See the Coal Industry Act 1994 s 8 (as amended); and PARAS 67-69 post. As to the Coal Authority see PARA 52 et seq post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(2) PROPERTY IN MINES; PRESUMPTION OF OWNERSHIP/27. Land held by limited owners.

27. Land held by limited owners.

Where mines¹, whether as part of the land or as a separate tenement, are held for an estate for years or from year to year, the right of possession in the mines, and in the space formerly occupied by minerals² which have been worked, is vested in the termor or tenant from year to year, as the case may be³.

1 For the meaning of 'mine' see PARA 5 ante.

2 For the meaning of 'minerals' see PARA 12 ante.

3 *Attersoll v Stevens* (1808) 1 Taunt 183; *Lewis v Branthwaite* (1831) 2 B & Ad 437; *Keyse v Powell* (1853) 2 E & B 132; *Raine v Alderson* (1838) 6 Scott 691; *Milne v Taylor* (1850) 16 LTOS 172; and see PARA 371 post; and REAL PROPERTY; SETTLEMENTS.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(2) PROPERTY IN MINES; PRESUMPTION OF OWNERSHIP/28. Mines under enfranchised land.

28. Mines under enfranchised land.

The law on mines and minerals in or under land of former copyhold and customary freehold tenure, and the effect of enfranchisement, are dealt with elsewhere in this title¹.

¹ See PARA 312 post. As to the rights conferred by statute to work coal in former copyhold land see the Coal Industry Act 1994 ss 49, 50, Sch 7; and PARA 400 et seq post. As to copyhold generally see CUSTOM AND USAGE; REAL PROPERTY.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(2) PROPERTY IN MINES; PRESUMPTION OF OWNERSHIP/29. Title presumed from acts of ownership.

29. Title presumed from acts of ownership.

Acts of ownership exercised over mines¹ or quarries² may, apart from statute, in the absence or inadequacy of rebutting evidence, give rise to a presumption of ownership³, even in favour of a mere wrongdoer or trespasser⁴, or if exercised during the statutory period may support a statutory title⁵. There may also be evidence of a custom regarding the working of minerals⁶ in a manor⁷ or some other area⁸ in which customary rights prevail.

1 For the meaning of 'mine' see PARA 5 ante.

2 For the meaning of 'quarry' see PARA 6 ante.

3 *Hanmer v Chance* (1865) 4 De GJ & Sm 626.

4 *Ashton v Stock* (1877) 6 ChD 719 at 726, obiter, per Hall V-C.

5 *Thew v Wingate* (1862) 10 B & S 714; *Smith v Stocks* (1869) 10 B & S 701; and see LIMITATION PERIODS vol 68 (2008) PARA 1084.

6 For the meaning of 'minerals' see PARA 12 ante.

7 *Warrick v Queen's College, Oxford* (1871) 6 Ch App 716; *Heath v Deane* [1905] 2 Ch 86 at 93. As to proof see COMMONS vol 13 (2009) PARA 467 et seq.

8 *A-G v Mathias* (1858) 4 K & J 579. As to customary rights generally see CUSTOM AND USAGE.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(2) PROPERTY IN MINES; PRESUMPTION OF OWNERSHIP/30. Extent of area affected by presumption from acts of ownership.

30. Extent of area affected by presumption from acts of ownership.

As the act of working minerals¹ constitutes a removal, pro tanto, of that which gives a particular place its value, the question arises how far constructive possession of a wider area can be inferred from actual possession of a limited area. Thus acts of taking or dealing with minerals under certain land are evidence of the ownership of the minerals under other land within the same boundaries², and if possession is taken under a document constructive possession will be inferred of so many seams³ or such areas⁴ as are intended to be comprised in the document, but mere trespass on a neighbouring mine for longer than the prescription period gives no title to that mine⁵. Generally, where title is established or evidenced by lapse of time, constructive possession of an area wider than that actually worked will only be inferred in cases where such an inference is necessary to give effect to contractual obligations or to preserve the good faith and honesty of a bargain⁶.

1 For the meaning of 'minerals' see PARA 12 ante.

2 *Barnes v Mawson* (1813) 1 M & S 77; *Tyrwhitt v Wynne* (1819) 2 B & Ald 554 (waste of manor); *Doe d Earl of Falmouth v Alderson* (1836) 1 M & W 210 (tin bounds); *Wild v Holt* (1842) 11 LJ Ex 285; *Taylor v Parry* (1840) 9 LJCP 298. See, however, PARA 21 text to note 11 ante.

3 *Low Moor Co v Stanley Coal Co Ltd* (1876) 34 LT 186, CA.

4 *Davis v Shepherd* (1866) 1 Ch App 410.

5 *Earl of Dartmouth v Spittle* (1871) 19 WR 444; *Ashton v Stock* (1877) 6 ChD 719; *Thompson v Hickman* [1907] 1 Ch 550. For the meaning of 'mine' see PARA 5 ante.

6 *Glyn v Howell* [1909] 1 Ch 666 at 678 per Eve J; and see *M'Donnell v M'Kinty* (1847) 10 ILR 514. As to the presumption of ownership of undersea mines in Scotland see *Lord Advocate v Wemyss* [1900] AC 48, HL.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(3) RIGHTS INCIDENTAL TO OWNERSHIP/(i) Possession/31. Recovery of possession.

(3) RIGHTS INCIDENTAL TO OWNERSHIP

(i) Possession

31. Recovery of possession.

Proceedings may be instituted by the owner for recovery of possession if a trespasser is in possession of a mine¹. The claim may relate to the surface and the mines beneath², or to the mines alone, whether open³ or unopened⁴. Thus a coal mine or a salt pit⁵, a mine under a tin bound, though not the tin bound⁶, a stratum of coal⁷, and mining liberties appurtenant to land may be the subject of such proceedings⁸; but a claim to possession may not be brought in respect of a liberty to get minerals alone, for this is an incorporeal hereditament⁹. If a tenant works a quarry¹⁰ when the right to the stone is reserved by the lease, the landlord may maintain an action for conversion¹¹.

1 For the meaning of 'mine' see PARA 5 ante.

2 *Crocker v Fothergill* (1819) 2 B & Ald 652; *Harebottle v Placock* (1604) Cro Jac 21; *Goodtitle d Chester v Alker* (1757) 1 Burr 133. As to trespass see TORT vol 97 (2010) PARA 524 et seq.

3 *Sayer v Pierce* (1749) 1 Ves Sen 232; *Wilkinson v Proud* (1843) 11 M & W 33 at 38. As to open and unopened mines see PARAS 7-11 ante.

4 See *Doe d Lord v Kingsbury* (1848) 10 LTOS 442; *Low Moor Co v Stanley Coal Co Ltd* (1875) 33 LT 436 (affd (1876) 34 LT 186, CA).

5 *Comyn v Kyneto* (1607) Cro Jac 150; *Andrews v Whittingham* (1692) Cart 277.

6 *Doe d Earl of Falmouth v Alderson* (1836) 1 M & W 210. As to tin bounds see PARAS 589-592 post.

7 *Earl of Dartmouth v Spittle* (1871) 19 WR 444 at 445 per Kelly CB.

8 *Crocker v Fothergill* (1819) 2 B & Ald 652 at 661 per Holroyd J.

9 *Crocker v Fothergill* (1819) 2 B & Ald 652; *Doe d Hanley v Wood* (1819) 2 B & Ald 724; *Low Moor Co v Stanley Coal Co Ltd* (1876) 34 LT 186 at 189, CA. The right to get coal in another's land may be acquired by prescription: *Wilkinson v Proud* (1843) 11 M & W 33. As to incorporeal hereditaments see REAL PROPERTY; and as to the acquisition of a profit à prendre by prescription see EASEMENTS AND PROFITS A PRENDRE.

10 For the meaning of 'quarry' see PARA 6 ante.

11 *Brown v Chadwick* (1857) 7 ICLR 101 at 108; and see PARA 33 post. As to the action of conversion see TORT vol 45(2) (Reissue) PARA 548 et seq.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(3) RIGHTS INCIDENTAL TO OWNERSHIP/(i) Possession/32. Effect of non-user of right to get minerals.

32. Effect of non-user of right to get minerals.

The title of the owner of mines¹ and minerals² having the right to enter and get the minerals is not barred by the simple omission to exercise his right³. Similarly, the right to work a mine is not lost by simply ceasing to work it⁴. Moreover, if a trespasser to a mine abandons possession before he has acquired a title, time does not continue to run in his favour even if there is no new act of ownership by the rightful owner⁵.

1 For the meaning of 'mine' see PARA 5 ante.

2 For the meaning of 'minerals' see PARA 12 ante.

3 *M'Donnell v M'Kinty* (1847) 10 ILR 514; *Smith v Lloyd* (1854) 9 Exch 562; *Trustees, Executors and Agency Co Ltd v Short* (1888) 13 App Cas 793 at 799, PC; *Seaman v Vawdrey* (1810) 16 Ves 390 at 392; *Jamieson v Harvey* [1876] WN 277, HL; *Adair v Shaftoe* (circa 1790), cited in *Norway v Rowe* (1812) 19 Ves 144 at 156 per Lord Eldon LC. See further LIMITATION PERIODS vol 68 (2008) PARA 1084.

4 *Low Moor Co v Stanley Coal Co Ltd* (1876) 34 LT 186, CA; and see *Heath v Deane* [1905] 2 Ch 86. As to rights to work minerals see PARA 355 et seq post.

5 *Trustees, Executors and Agency Co Ltd v Short* (1888) 13 App Cas 793, PC. It has been stated that when a lease of mines has been granted and there is no entry by the grantee within the time of limitation, the grantee's rights against the lessor are barred at the expiration of the statutory period: *Keyse v Powell* (1853) 2 E & B 132 at 147. This seems not to be the case, however, when the lessor is not in actual possession: see LIMITATION PERIODS vol 68 (2008) PARA 1084.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(3) RIGHTS INCIDENTAL TO OWNERSHIP/(i) Possession/33. Abandonment of right to get minerals.

33. Abandonment of right to get minerals.

If the right to work minerals¹ is granted for a term of years, the right is not waived or abandoned during the term, even where the grantee has ceased working for many years². A presumption of right arises from possession³ apart from the Limitation Act 1980⁴, but the title to minerals will be extinguished if possession is abandoned by the owner and another has actual possession for the statutory period⁵.

1 For the meaning of 'minerals' see PARA 12 ante.

2 *Crang v Adams* (1776) 5 Bro Parl Cas 588.

3 *Hodgkinson v Fletcher* (1781) 3 Doug KB 31 at 33.

4 See LIMITATION PERIODS vol 68 (2008) PARA 1016 et seq.

5 See LIMITATION PERIODS vol 68 (2008) PARA 1079; and *Smith v Stocks* (1869) 10 B & S 701 (actual possession by stranger of gravel pit and road to it).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(3) RIGHTS INCIDENTAL TO OWNERSHIP/(ii) Rights against Persons wrongfully taking Minerals/34. Property in abstracted minerals.

(ii) Rights against Persons wrongfully taking Minerals

34. Property in abstracted minerals.

At common law, when part of the realty is severed and converted into a chattel, it becomes immediately the property of the person who was the owner of the land whilst it remained a portion of the land¹. However, the damages to which the owner is entitled against a person wrongfully taking minerals² are based (in the absence of fraud or negligence) on what the owner has lost, which is the value of the mineral as it existed unworked in the pit³.

1 *Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25 at 39, HL, per Lord Blackburn. As to property in mining refuse see *Boileau v Heath* [1898] 2 Ch 301.

2 For the meaning of 'minerals' see PARA 12 ante.

3 See *Jegon v Vivian* (1871) 6 Ch App 742 at 760 per Lord Hatherley LC; *Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25 at 40, HL, per Lord Blackburn; *Peruvian Guano Co Ltd v Dreyfus Bros & Co* [1892] AC 170n at 175n, HL, per Lord Macnaghten. As to the rules governing the measure of damages generally see PARA 43 et seq post. See also PARA 377 post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(3) RIGHTS INCIDENTAL TO OWNERSHIP/(ii) Rights against Persons wrongfully taking Minerals/35. Claim for an account.

35. Claim for an account.

A claim may be maintained for an account of minerals wrongfully abstracted¹. In such a claim the defendant is required to account for the value of the mineral raised, that is to say the market price or value after making just allowances². When a mine³ is held in trust for co-owners, one of the equitable co-owners who has not consented to the grant by the others of a licence to work may have an account against the licensee⁴.

Such a claim for an account is available not only against the wrongdoer but also, after his death, against his personal representatives⁵.

1 *Phillips v Homfray* [1892] 1 Ch 465 at 470, CA, per Lindley LJ; *Dean v Thwaite* (1855) 21 Beav 621; *Llynvi Co v Brogden* (1870) LR 11 Eq 188; *Jegon v Vivian* (1871) 6 Ch App 742 at 762; *Job v Potton* (1875) LR 20 Eq 84 at 99; *Ecclesiastical Comrs for England v North Eastern Rly Co* (1877) 4 ChD 845 at 868; *Ashton v Stock* (1877) 6 ChD 719 at 727; *Joicey v Dickinson* (1881) 45 LT 643, CA. See also PARA 377 post. For the meaning of 'minerals' see PARA 12 ante.

The circumstances of the case may sometimes, however, be so complex that the owner of the minerals may be without a remedy. If a person sinks a shaft on his own land and pumps brine from it, both of which acts are prima facie lawful, the acts do not of necessity become unlawful merely because it turns out that the brine obtained may be the result of dissolution of rock in another person's property. It may be impossible to ascertain the source of the brine, although it may be possible, by tracing subsequent subsidences of the surface, to form some judgment as to the area from which salt rock has been dissolved. To such an abnormal case it is practically impossible to apply the ordinary principles of law relating to underground property: see *Salt Union Ltd v Brunner, Mond & Co* [1906] 2 KB 822. In this respect there is no difference in principle between mineral more or less in suspension, as running silt, and mineral in solution, as brine. If, however, the silt is only wet sand, a claim for wrongful removal will lie: see *Salt Union Ltd v Brunner, Mond & Co* supra; *Jordeson v Sutton, Southcoates and Drypool Gas Co* [1898] 2 Ch 614 (affd [1899] 2 Ch 217, CA); *Trinidad Asphalt Co v Ambard* [1899] AC 594, PC; cf *Lotus Ltd v British Soda Co Ltd* [1972] Ch 123, [1971] 1 All ER 265; *Fletcher v Birkenhead Corpn* [1906] 1 KB 605 (affd [1907] 1 KB 205, CA); *English v Metropolitan Water Board* [1907] 1 KB 588. As to the action of account generally see EQUITY.

2 See *Phillips v Homfray* [1892] 1 Ch 465 at 470, CA, per Lindley LJ; and PARA 43 post.

3 For the meaning of 'mine' see PARA 5 ante.

4 *Job v Potton* (1875) LR 20 Eq 84 at 96, considered in *Glyn v Howell* [1909] 1 Ch 666 at 677; see also *Denys v Shuckburgh* (1840) 4 Y & C Ex 42. The result of the 1925 property legislation is that beneficial joint tenants and tenants in common are beneficiaries under a trust. This does not affect their right to an account inter se, and may in certain circumstances afford an added right to an account as against the trustee: see TRUSTS. As to the rights of co-owners see further PARA 366 et seq post; and as to licences see PARA 349 et seq post.

5 *Bishop of Winchester v Knight* (1717) 1 P Wms 406; *Phillips v Homfray* [1892] 1 Ch 465 at 470, CA, per Lindley LJ. See also the Law Reform (Miscellaneous Provisions) Act 1934 s 1(1) (amended by the Law Reform (Miscellaneous Provisions) Act 1970 s 7(2), Schedule; and the Administration of Justice Act 1982 s 75(1), Sch 9 Pt I); and EXECUTORS AND ADMINISTRATORS.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(3) RIGHTS INCIDENTAL TO OWNERSHIP/(ii) Rights against Persons wrongfully taking Minerals/36. Injunctions.

36. Injunctions.

An injunction may be obtained to restrain future working¹. This jurisdiction was first exercised on account of the irreparable injury to the property, as a mine²; and on the principle that a mine is regarded as a species of trade³. Where the application is to stay waste it must be made promptly⁴.

1 See the Supreme Court Act 1981 s 37; and CIVIL PROCEDURE vol 11 (2009) PARA 347. See also *Trinidad Asphalt Co v Ambard* [1899] AC 594, PC; *Ashton v Stock* (1877) 6 ChD 719 at 725 per Hall V-C; *Phillips v Homfray*, *Fothergill v Phillips* (1871) 6 Ch App 770; *Wright v Pitt* (1870) LR 12 Eq 408; *Hilton v Woods* (1867) LR 4 Eq 432 at 440 per Malins V-C; *Wilson v Grey* (1866) LR 3 Eq 117 at 121 per Stuart V-C; *Ackroyd v Briggs* (1865) 13 LT 521; *Hunt v Peake* (1860) John 705 at 713. In a proper case the court will make an order for an early trial: *Grey v Duke of Northumberland* (1809) 17 Ves 281. See also PARA 377 post; and CIVIL PROCEDURE vol 11 (2009) PARA 437 et seq.

2 For the meaning of 'mine' see PARA 5 ante.

3 *Flamang's Case* (circa 1783) cited in 7 Ves 308. As to the extension of the remedy by injunction so as to apply in case of trespass as well as waste see *Mitchell v Dors* (1801) 6 Ves 147; *Crockford v Alexander* (1808) 15 Ves 138; *Earl of Cowper v Baker* (1810) 17 Ves 128; *Thomas v Oakley* (1811) 18 Ves 184. As to the circumstances in which a receiver may be appointed see RECEIVERS.

4 *Hilton v Earl Granville* (1841) Cr & Ph 283; and see CIVIL PROCEDURE vol 11 (2009) PARA 441.

UPDATE

36 Injunctions

NOTE 1--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(3) RIGHTS INCIDENTAL TO OWNERSHIP/(ii) Rights against Persons wrongfully taking Minerals/37. Claims for conversion and for money had and received.

37. Claims for conversion and for money had and received.

The owner of minerals¹ which have been wrongfully abstracted may also bring a claim of conversion against the wrongdoer² or, if the wrongdoer has sold the minerals, a claim for money had and received³, but not for use and occupation⁴. The claim for money had and received will also lie against the personal representatives of the wrongdoer in respect of the proceeds of minerals raised before his death⁵. No direct evidence of the actual sum received is necessary⁶.

1 For the meaning of 'minerals' see PARA 12 ante.

2 *Martin v Porter* (1839) 5 M & W 351; and see TORT vol 45(2) (Reissue) PARA 548 et seq.

3 See *Powell v Rees* (1837) 7 Ad & El 426 at 428 per Lord Denman CJ; and CONTRACT.

4 *Phillips v Homfray* [1892] 1 Ch 465 at 472, CA, per Lopes LJ.

5 *Powell v Rees* (1837) 7 Ad & El 426 at 428 per Lord Denman CJ.

6 *Powell v Rees* (1837) 7 Ad & El 426.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(3) RIGHTS INCIDENTAL TO OWNERSHIP/(ii) Rights against Persons wrongfully taking Minerals/38. Damages for trespass.

38. Damages for trespass.

The owner of minerals¹ which have been wrongfully abstracted may bring a claim for damages for trespass², but actual possession is necessary to maintain this form of claim³. If a tenant is in possession the landlord may sue for injury to the reversion⁴, but not for a trespass which is not shown to injure the reversion⁵. A person in possession with an exclusive right to take minerals⁶, and a person entitled under the Limitation Act 1980, may maintain a claim of trespass⁷. A claim for damages for trespass, or for damage to the land by working the minerals, or for compensation for the use of roads and passages⁸, is maintainable after the death of the wrongdoer⁹.

1 For the meaning of 'minerals' see PARA 12 ante.

2 See *Martin v Porter* (1839) 5 M & W 351; *Morgan v Powell* (1842) 3 QB 278; *Clegg v Dearden* (1848) 12 QB 576; *Brain v Harris* (1855) 10 Exch 908; *Hunter v Gibbons* (1856) 1 H & N 459; *Earl of Dartmouth v Spittle* (1871) 19 WR 444; *Eardley v Granville* (1876) 3 ChD 826.

3 *Cox v Glue* (1848) 5 CB 533 at 549, 550 per Wilde CJ; and see *Wallis v Hands* [1893] 2 Ch 75 at 85, 86; *Ocean Accident and Guarantee Corp v Ilford Gas Co* [1905] 2 KB 493 at 497, 498, CA, per Collins MR.

4 *Raine v Alderson* (1838) 6 Scott 691; *Harker v Birkbeck* (1764) 3 Burr 1556 at 1563 per Lord Mansfield CJ, where it was held that an action on the case was maintainable. See also *Wood v Morewood* (1841) 3 QB 440n.

5 *Cooper v Crabtree* (1882) 20 ChD 589, CA.

6 *Low Moor Co v Stanley Coal Co Ltd* (1875) 33 LT 436 (affd (1876) 34 LT 186, CA); and see *Eardley v Granville* (1876) 3 ChD 826 at 833 per Jessel MR.

7 *Low Moor Co v Stanley Coal Co Ltd* (1875) 33 LT 436; affd (1876) 34 LT 186, CA.

8 Formerly an action was not maintainable after the death of the wrongdoer for damage to the land by working the minerals, or for compensation for the use of roads and passages: see *Phillips v Homfray* (1883) 24 ChD 439, CA (affd (1886) 11 App Cas 466, HL); *Phillips v Homfray* (1890) 44 ChD 694 (affd [1892] 1 Ch 465, CA).

9 See the Law Reform (Miscellaneous Provisions) Act 1934 s 1(1) (amended by the Law Reform (Miscellaneous Provisions) Act 1970 s 7(2), Schedule; and the Administration of Justice Act 1982 s 75(1), Sch 9 Pt I); the Supreme Court Act 1981 s 87 (amended by the Civil Procedure Act 1997 s 10, Sch 2 para 1(6)); and CIVIL PROCEDURE; EXECUTORS AND ADMINISTRATORS. As to the limitation period applicable where proceedings are brought after the death of the wrongdoer see LIMITATION PERIODS vol 68 (2008) PARA 916.

UPDATE

38 Damages for trespass

NOTE 9--Supreme Court Act 1981 s 87 (now Senior Courts Act 1981 s 87) further amended: Courts Act 2003 (Consequential Amendments) Order 2004, SI 2004/2035.

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39. Liability of mortgagee.

A mortgagee¹ of leaseholds in possession may be accountable for the wrongful working of a mine² by a sub-lessee³, and a mortgagee, although not in possession, who authorises the working, is accountable in a redemption claim⁴. If the mortgagor is in possession, however, the mortgagee is not liable for wrongful working by the mortgagor, even where he receives the proceeds, unless he knows that the working is wrongful⁵.

1 As to mortgagees generally see MORTGAGE vol 77 (2010) PARA 101 et seq.

2 For the meaning of 'mine' see PARA 5 ante.

3 *Taylor v Mostyn* (1886) 33 ChD 226, CA.

4 *Hood v Easton* (1856) 2 Giff 692 at 701.

5 *Powell v Aiken* (1858) 4 K & J 343; *Elias v Griffith* (1878) 8 ChD 521 at 528, CA.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(3) RIGHTS INCIDENTAL TO OWNERSHIP/(ii) Rights against Persons wrongfully taking Minerals/40. Access to and inspection of mine.

40. Access to and inspection of mine.

Where workings have taken place wrongfully, the owner of the mines¹ and minerals² may obtain liberty of access for the purpose of stopping up passages into his mine³. In a proper case, an order for inspection of the defendant's mine through his pits may be obtained on interim application⁴. Such an order is granted with all necessary incidental powers, so that all obstructions will be directed to be removed except where such removal will occasion danger to life or destruction of the mine⁵. The order has usually been granted subject to conditions; for example, the applicant must give reasonable notice in writing of the time at which it is proposed to inspect⁶, and of the names and descriptions of the persons who are to make the inspection, subject to objection by the respondents⁷; the inspection may be limited to a certain part of the mine only; no unnecessary damage to the respondent's property or interference with his proper mining operations may be allowed⁸; security may be required against damage caused by the inspection⁹; and the costs of the inspection may have to be provided for in any event¹⁰. Inspection has usually been authorised only for the purpose of ascertaining the boundary of the applicant's mine¹¹, and the extent of the trespass¹².

1 For the meaning of 'mine' see PARA 5 ante.

2 For the meaning of 'mineral' see PARA 12 ante.

3 *Phillips v Homfray, Fothergill v Phillips* (1871) 6 Ch App 770 at 776; see also *Plant v Stott* (1869) 21 LT 106 at 107.

4 CPR 25.1; CPR 25.5; and see CIVIL PROCEDURE. See also *Earl of Lonsdale v Curwen* (1799) 3 Bligh 168n; *Cooper v Ince Hall Co* [1876] WN 24; *Whaley v Brancker* (1864) 10 Jur NS 535; *Bennitt v Whitehouse* (1860) 28 Beav 119 at 122; and see *Bradford Corp v Ferrand and Shipley UDC* (1902) 86 LT 497; *Lumb v Beaumont* (1884) 27 ChD 356 at 358. The court also has powers to order an inspection of property before proceedings are started: see the Supreme Court Act 1981 s 33 (amended by the Civil Procedure (Modification of Enactments) Order 1998, SI 1998/2940, art 5(a)); CPR 25.1 (1)(i), (j), 25.4 (1)(b), (2), 25.5. As to orders for inspection of property generally see CIVIL PROCEDURE vol 11 (2009) PARA 793.

5 *Walker v Fletcher* (1804) 3 Bligh 172n; *Ennor v Barwell* (1860) 1 De GF & J 529; *Bennett v Griffiths* (1861) 3 E & E 467; *Lumb v Beaumont* (1884) 27 ChD 356; *Earl of Lonsdale v Curwen* (1799) 3 Bligh 168n.

6 *Bennitt v Whitehouse* (1860) 28 Beav 119.

7 *Walker v Fletcher* (1804) 3 Bligh 172n; *Lewis v Marsh* (1849) 8 Hare 97; *Ennor v Barwell* (1860) 1 De GF & J 529.

8 *Cooper v Ince Hall Co* [1876] WN 24.

9 *Bennett v Griffiths* (1861) 3 E & E 467.

10 *Mitchell v Darley Main Colliery Co* (1883) 10 QBD 457, DC; *Cooper v Ince Hall Co* [1876] WN 24.

11 *Lewis v Marsh* (1849) 8 Hare 97 at 100; *Cooper v Ince Hall Co* [1876] WN 24.

12 *Bennitt v Whitehouse* (1860) 28 Beav 119 at 123; *Cooper v Ince Hall Co* [1876] WN 24.

UPDATE

40 Access to and inspection of mine

NOTE 4--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(3) RIGHTS INCIDENTAL TO OWNERSHIP/(ii) Rights against Persons wrongfully taking Minerals/41. Disclosure of documents.

41. Disclosure of documents.

Production and inspection of the defendant's title deeds for the purpose of ascertaining boundaries may be obtained, liberty being given to seal up all but the parcels and plans¹. In a claim for an account of minerals² in which the defendant denies the claimant's title without pleading his own, a request for information as to the defendant's title may be allowed³.

1 *Wayne's Merthyr Co v Powell's Dyffryn Steam Coal Co* [1880] WN 141 (affd [1880] WN 159, CA); *Ponsonby v Hartley* [1883] WN 13 (affd [1883] WN 44, CA); *Jenkins v Bushby* (1866) 35 LJ Ch 400. As to disclosure and requests for information generally see CIVIL PROCEDURE.

2 For the meaning of 'minerals' see PARA 12 ante.

3 *Cayley v Sandycroft Brick, Tile and Colliery Co* (1885) 33 WR 577; and see CIVIL PROCEDURE.

UPDATE

41 Disclosure of documents

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(3) RIGHTS INCIDENTAL TO OWNERSHIP/(ii) Rights against Persons wrongfully taking Minerals/42. Criminal proceedings.

42. Criminal proceedings.

In certain circumstances criminal proceedings for theft may be instituted against a person who appropriates anything forming part of land by severing it or causing it to be severed, or after it has been severed¹. Such proceedings may be instituted also for destruction of or damage to property in defined circumstances².

¹ See the Theft Act 1968 s 4(2)(b); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 286.

² See the Criminal Damage Act 1971 s 1; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 333 et seq.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(3) RIGHTS INCIDENTAL TO OWNERSHIP/(ii) Rights against Persons wrongfully taking Minerals/43. Measure of damages.

43. Measure of damages.

By the rules of equity in claims of account, which are applicable in all courts¹, the claimant is entitled to the market value of the minerals at the pit's mouth subject to certain allowances. The defendant may be allowed the cost of hewing and bringing to bank if he has acted inadvertently², or under a belief of title in good faith³, or fairly and honestly⁴, or in cases of mere mistake in circumstances where there is no suggestion of fraud⁵, or where the mineral was worked under an expectation in good faith of a contract which the mineral owner knew would be acted on at once⁶. This rule is applicable to cases when the mineral owner stands by and sees the mineral worked without interfering⁷. However, the cost of hewing is not allowed to the defendant when he has acted fraudulently⁸, negligently⁹ or wilfully¹⁰, or in a manner wholly unauthorised and unlawful¹¹; but even then the defendant is not deprived of the cost of bringing the mineral to bank¹². This measure of damages has been applied where the defendants had, with the landowner's permission, driven headings into an adjoining mine during negotiations for a lease and continued the working without the landowner's knowledge after they had declined to accept the lease¹³; where, after preliminary workings in expectation of a lease, the intending lessee continued the workings after it was found that the intending lessor had no power to grant a lease¹⁴; where the defendant worked a neighbouring mine knowing the boundaries of his own¹⁵; and even in a case of inadvertent working¹⁶. These principles apply to claims in the winding up of a company¹⁷. The measure of damages is not affected by a covenant which binds the claimant to use any mineral got upon the premises¹⁸. Where the mineral could have been worked only by the trespasser, damages have been assessed in accordance with the value of the royalty paid for the surrounding field of minerals¹⁹, but a trespasser who is allowed disbursements for hewing and bringing to bank is not entitled to any profit or trade allowance²⁰.

1 *Peruvian Guano Co Ltd v Dreyfus Bros & Co* [1892] AC 166 at 175, HL, per Lord Macnaghten. Before 1875 the damages recoverable for wrongfully working minerals depended upon the form of claim adopted: see *Peruvian Guano Co Ltd v Dreyfus Bros & Co* supra at 175; *Martin v Porter* (1839) 5 M & W 351; *Wild v Holt* (1842) 9 M & W 672; *Morgan v Powell* (1842) 3 QB 278 (but cf *Wood v Morewood* (1841) 3 QB 440n (trespass)); *Jegon v Vivian* (1871) 6 Ch App 742 at 761, 762; *Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25 at 40, HL, per Lord Blackburn. For the meaning of 'minerals' see PARA 12 ante.

2 *Hilton v Woods* (1867) LR 4 Eq 432.

3 *Hilton v Woods* (1867) LR 4 Eq 432; *Jegon v Vivian* (1871) 6 Ch App 742 at 761; *Elias v Griffith* (1878) 8 ChD 521 at 529, CA; *Ashton v Stock* (1877) 6 ChD 719.

4 *Wood v Morewood* (1841) 3 QB 440n.

5 *Re United Merthyr Collieries Co* (1872) LR 15 Eq 46. See also *Bulli Coal Mining Co v Osborne* [1899] AC 351 at 362, PC.

6 *Trotter v Maclean* (1879) 13 ChD 574 at 587; *Townend v Askern Coal and Iron Co* [1934] Ch 463.

7 *Jegon v Vivian* (1871) 6 Ch App 742 at 762; *Trotter v Maclean* (1879) 13 ChD 574 at 587. The principle thus adopted is that if the wrongful act is shown to have been committed inadvertently, and there are no circumstances which a court of equity would consider to affect the case, just allowance is to be made for outlay on the wrongdoer's part, and as far as possible there is to be returned to the rightful owner the full value of that which cannot be restored to him in specie: see *Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25, HL; *Dreyfus Bros & Co v Peruvian Guano Co Ltd* (1889) 42 ChD 66 at 76; *Peruvian Guano Co Ltd v Dreyfus Bros & Co* [1892] AC 166, HL; *Eden v North Eastern Rly Co* [1907] AC 400, HL. The owner has no right to follow the severed minerals into whatever place they may be carried, or in whatever circumstances they may come to be disposed of, and to fasten upon any increment of value which from exceptional circumstances may be found to

attach to those minerals. The test is what may fairly be said to have been the value of the mineral to the person from whose property it was taken at the time it was taken: *Livingstone v Rawyards Coal Co* supra at 32 per Earl Cairns LC. In such cases the value is estimated on the basis that no impediment exists which would prevent the owner from himself working the minerals. Where such an impediment exists, account may be taken of it: see the text and note 19 infra.

8 *Ecclesiastical Comrs for England v North Eastern Rly Co* (1877) 4 ChD 845; *Joicey v Dickinson* (1881) 45 LT 643, CA; *Bulli Coal Mining Co v Osborne* [1899] AC 351 at 362, PC; and see *Cassell & Co Ltd v Broome* [1972] AC 1027 at 1129, [1972] 1 All ER 801 at 873, HL, per Lord Diplock.

9 *Wood v Morewood* (1841) 3 QB 440n.

10 *Martin v Porter* (1839) 5 M & W 351; *Trotter v Maclean* (1879) 13 ChD 574 at 588; *Phillips v Homfray* (1890) 44 ChD 694 at 701 (affd [1892] 1 Ch 465, CA).

11 *Llynvi Co v Brogden* (1870) LR 11 Eq 188.

12 *Trotter v Maclean* (1879) 13 ChD 574 at 586; *Joicey v Dickinson* (1881) 45 LT 643 at 644, CA; but see *Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25 at 34, HL, per Lord Hatherley, and at 39 per Lord Blackburn; *Job v Potton* (1875) LR 20 Eq 84 at 91, 97; *Plant v Stott* (1869) 21 LT 106.

13 *Phillips v Homfray*, *Fothergill v Phillips* (1871) 6 Ch App 770 at 771; subsequent proceedings *Phillips v Homfray* (1890) 44 ChD 694.

14 *Trotter v Maclean* (1879) 13 ChD 574 at 588.

15 *Joicey v Dickinson* (1881) 45 LT 643, CA.

16 *Ecclesiastical Comrs for England v North Eastern Rly Co* (1877) 4 ChD 845. This decision was disapproved in *Bulli Coal Mining Co v Osborne* [1899] AC 351, PC. See also LIMITATION PERIODS vol 68 (2008) PARAS 993, 1225.

17 *Re United Merthyr Collieries Co* (1872) LR 15 Eq 46; *Bulli Coal Mining Co v Osborne* [1899] AC 351, PC.

18 *Ashton v Stock* (1877) 6 ChD 719 at 726.

19 *Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25, HL; see also *Townend v Askern Coal and Iron Co* [1934] Ch 463; and note 7 supra.

20 *Re United Merthyr Collieries Co* (1872) LR 15 Eq 46.

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44. Interest.

The circumstances in which the court may grant interest on damages awarded are dealt with elsewhere in this work¹. It seems that interest may be allowed also in a claim for an account arising out of a trespass².

1 See DAMAGES; FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1303 et seq. Where an inquiry as to damages is directed and the order does not contain a direction for payment, the order is not one within the Judgments Act 1838 s 18 (as amended), so as to render interest on the damages payable from the date of the order: *Ashover Fluor Spar Mines Ltd v Jackson* [1911] 2 Ch 355; and see CIVIL PROCEDURE vol 12 (2009) PARA 1149.

2 *Phillips v Homfray* [1892] 1 Ch 465, CA.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(3) RIGHTS INCIDENTAL TO OWNERSHIP/(ii) Rights against Persons wrongfully taking Minerals/45. Abstraction by railway authority.

45. Abstraction by railway authority.

If a railway authority, after giving notice to treat, removes minerals¹ not included in the notice, and the removal is not necessary for making the railway, damages can be recovered, and the landowner is not obliged² to take compensation³.

1 For the meaning of 'minerals' see PARA 12 ante.

2 Ie under the Railways Clauses Consolidation Act 1845 s 6 (as amended): see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARAS 291, 423.

3 *Tiverton and North Devon Rly Co v Loosemore* (1884) 9 App Cas 480, HL.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(3) RIGHTS INCIDENTAL TO OWNERSHIP/(ii) Rights against Persons wrongfully taking Minerals/46. Consequential damage.

46. Consequential damage.

Damages are recoverable for consequential injury resulting from the wrongful working of minerals¹, for example for injury caused to houses on the surface², for subsidence of the surface caused by the removal of support³, for minerals rendered unworkable⁴, and for letting in water⁵. If damages are recovered for letting in water, there is no further liability for continuing damage from flooding through the same aperture⁶. Damages are recoverable for the loss of pitch which the defendant, by removing lateral support, has caused to flow upon his land and appropriated⁷. This principle does not apply when the defendant has pumped brine upon his own land which in part results from dissolution of the claimant's rock⁸. An inquiry has been directed as to damages beyond the removal of the minerals occasioned by working the mines⁹, as to damage by reason of the manner in which the wrongdoers worked the minerals¹⁰, and as to damage by reason of the wrongdoers having broken through the boundary¹¹; and compensation may be obtained as for a wayleave when the trespasser has wrongfully carried minerals through the mine¹².

1 For the meaning of 'minerals' see PARA 12 ante.

2 *Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25 at 33, HL; *Hunt v Peake* (1860) John 705. See PARAS 187-189 post.

3 *Trinidad Asphalt Co v Ambard* [1899] AC 594, PC; *Lodge Holes Colliery Co Ltd v Wednesbury Corp'n* [1908] AC 323, HL (measure of damages where highway is let down is the cost of making an equally commodious road). As to subsidence damage see PARA 184 et seq post.

4 *Plant v Stott* (1869) 21 LT 106; *Williams v Raggett* (1877) 25 WR 874.

5 *Phillips v Homfray, Fothergill v Phillips* (1871) 6 Ch App 770 at 776; *Taylor v Mostyn* (1886) 33 ChD 226, CA; *Plant v Stott* (1869) 21 LT 106. See PARA 270 post.

6 *Clegg v Dearden* (1848) 12 QB 576. See PARA 272 post.

7 *Trinidad Asphalt Co v Ambard* [1899] AC 594, PC.

8 *Salt Union Ltd v Brunner, Mond & Co* [1906] 2 KB 822 at 831; and see *Lotus Ltd v British Soda Co Ltd* [1972] Ch 123, [1971] 1 All ER 265. See also PARA 35 note 1 ante.

9 *Jegon v Vivian* (1871) 6 Ch App 742. For the meaning of 'mine' see PARA 5 ante.

10 *Phillips v Homfray, Fothergill v Phillips* (1871) 6 Ch App 770.

11 *Llynvi Co v Brogden* (1870) LR 11 Eq 188 at 192.

12 *Martin v Porter* (1839) 5 M & W 351; *Jegon v Vivian* (1871) 6 Ch App 742 at 762; *Phillips v Homfray, Fothergill v Phillips* (1871) 6 Ch App 770 at 776. See PARAS 263-264 post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/2. OWNERSHIP/(3) RIGHTS INCIDENTAL TO OWNERSHIP/(ii) Rights against Persons wrongfully taking Minerals/47. Entitlement to damages recovered as between limited owners.

47. Entitlement to damages recovered as between limited owners.

If a lease with liberty to dig for minerals amounts to an absolute sale of all the minerals¹, the lessee is entitled as between himself and the lessor to retain the whole damages recovered by him from a trespasser who has worked the minerals².

If a tenant for life is not impeachable for waste he is entitled to compensation recovered from a trespasser in respect of minerals worked during the life tenancy³. If, on the other hand, the tenant for life is impeachable for waste, damages recovered are capital money⁴.

1 As to the nature of a mining lease see PARA 321 post. For the meaning of 'minerals' see PARA 12 ante.

2 *Attersoll v Stevens* (1808) 1 Taunt 183. As to the respective rights of lessor and lessee see PARA 38 ante.

3 *Re Barrington, Gamlen v Lyon* (1886) 33 ChD 523. As to the powers of a tenant for life see PARA 371 et seq post; and SETTLEMENTS. As to the phasing out of strict settlements and trusts for sale see the Trusts of Land and Appointment of Trustees Act 1996 s 2, Sch 1; and REAL PROPERTY; SETTLEMENTS; TRUSTS vol 48 (2007 Reissue) PARAS 601, 724.

4 *Re Barrington, Gamlen v Lyon* (1886) 33 ChD 523 at 527; and see *Bewick v Whitfield* (1734) 3 P Wms 267 at 268.

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48. Loss of remedies by lapse of time.

By statute a claim of tort may not normally be brought more than six years after the cause of action accrued¹, and a claim for an account may not be brought after the expiration of any statutory time limit applicable to the claim which is the basis of the duty to account². In a claim of tort in respect of the wrongful working of minerals, time normally runs from the date of the working³. The onus is on the defendant to show what portion of minerals found to have been abstracted was taken before the commencement of the six-year period⁴. Where, however, the claimant's right of action has been concealed by the defendant's fraud, time does not begin to run until the claimant has discovered the fraud or could with reasonable diligence have discovered it⁵. Moreover, if the person to whom a cause of action accrues is under a disability, the claim may normally be brought at any time before the expiration of six years from the date when the person ceased to be under a disability or died⁶.

In the case of a subsidence of the surface caused by the lawful working of minerals, time normally runs from the date of the subsidence⁷, but when subsidence results from the act of a trespasser, the cause of action is the trespass and time runs from that⁸.

The Limitation Act 1980 does not affect the prerogative right of the Crown or of the Duke of Cornwall to any gold or silver mine⁹.

1 See the Limitation Act 1980 s 2; and LIMITATION PERIODS vol 68 (2008) PARA 979.

2 See *ibid* s 23; and LIMITATION PERIODS vol 68 (2008) PARA 1008. See also *Denys v Shuckburgh* (1840) 4 Y & C Ex 42; *Dean v Thwaite* (1855) 21 Beav 621; *Dawes v Bagnall* (1875) 23 WR 690; *Ashton v Stock* (1877) 6 ChD 719; *Glyn v Howell* [1909] 1 Ch 666. For the principle that a mortgagee in possession is bound to account for all rents and profits received during his possession see LIMITATION PERIODS vol 68 (2008) PARA 1118.

3 See LIMITATION PERIODS vol 68 (2008) PARA 993. For the meaning of 'minerals' see PARA 12 ante.

4 *Dean v Thwaite* (1855) 21 Beav 621; *Trotter v Maclean* (1879) 13 ChD 574 at 585 per Fry J.

5 See the Limitation Act 1980 s 32 (as amended); and LIMITATION PERIODS vol 68 (2008) PARA 1220 et seq. For the conflict which formerly existed between the courts of law and equity as to the effect of fraudulent concealment see LIMITATION PERIODS vol 68 (2008) PARA 1220.

6 See *ibid* s 28 (as amended); and LIMITATION PERIODS vol 68 (2008) PARAS 1171, 1178.

7 *Darley Main Colliery Co v Mitchell* (1886) 11 App Cas 127, HL; *West Leigh Colliery Co Ltd v Tunncliffe and Hampson Ltd* [1908] AC 27, HL; and see LIMITATION PERIODS vol 68 (2008) PARA 921. As to the position where there is a continuance of damage see DAMAGES vol 12(1) (Reissue) PARAS 825, 834; LIMITATION PERIODS vol 68 (2008) PARA 921. As to subsidence damage see PARA 184 et seq post.

8 See LIMITATION PERIODS vol 68 (2008) PARA 993.

9 See the Limitation Act 1980 s 37(6). As to the application of the Act to the Crown see LIMITATION PERIODS vol 68 (2008) PARA 903. As to the prerogative right to mines of gold or silver see CROWN PROPERTY vol 12(1) (Reissue) PARA 218.

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49. Effect of release.

A release from liability for wrongful acts does not extend to wrongful abstraction carried on during negotiations for the release and after the boundaries have been settled¹.

¹ *Ecclesiastical Comrs for England v North Eastern Rly Co* (1877) 4 ChD 845.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/3. REORGANISATION OF THE COAL INDUSTRY/(1) INTRODUCTION/50. The Coal Industry Act 1994.

3. REORGANISATION OF THE COAL INDUSTRY

(1) INTRODUCTION

50. The Coal Industry Act 1994.

The main purposes of the Coal Industry Act 1994¹ are to provide for the establishment of the Coal Authority² and for the restructuring of the coal industry³. To achieve this the Act provides for the transfer of property, rights and liabilities⁴ of the British Coal Corporation⁵ and its wholly-owned subsidiaries to other persons⁶, and for the British Coal Corporation to lose its exclusive powers and duties of searching for, boring for, working and getting the coal in Great Britain⁷. The Act also provides for the dissolution of the British Coal Corporation⁸ and the abolition of the Domestic Coal Consumers' Council⁹, and makes provision for the licensing of coal-mining operations¹⁰ as well as making various other consequential changes to the law¹¹.

1 Coal Industry Act 1994 s 68(1). The provisions of the Act are brought into force on a number of different dates. The following provisions of the Act came into force on the passing of the Act (ie 5 July 1994): ss 7-9, 12-14, 17, 54, 62-66, 67(2)-(6), (8), Sch 2, Sch 11 Pt I: s 68(6). The following provisions of the Act came into force on the restructuring date (ie 31 October 1994: see PARA 3 note 9 ante): ss 10, 11, 18, 23, 31-34, 36, 38-44, 48-53, 55, 67(1), (8) (for certain purposes only), Schs 6, 7, 8, 9 (for certain purposes only), Sch 11 Pt II: s 68(2). The following provisions of the Act will come into force on the dissolution date (see PARAS 3 note 25 ante, 89 post): s 67(1), (8) (for certain purposes only), Sch 9 (for certain purposes only), Sch 11 Pt IV: s 68(3).

Apart from the above provisions, the Act comes into force on such days as the Secretary of State may by order made by statutory instrument appoint: see s 68(4), (5). As to the Secretary of State see PARA 4 ante. The following commencement orders have been made under the Coal Industry Act 1994: the Coal Industry Act 1994 (Commencement No 1) Order 1994, SI 1994/2189; the Coal Industry Act 1994 (Commencement No 2 and Transitional Provisions) Order 1994, SI 1994/2552; the Coal Industry Act 1994 (Commencement No 3) Order 1994, SI 1994/3063; the Coal Industry Act 1994 (Commencement No 4) Order 1995, SI 1995/159; the Coal Industry Act 1994 (Commencement No 5) Order 1995, SI 1995/273; and the Coal Industry Act 1994 (Commencement No 6) and Membership of the British Coal Corporation (Appointed Day) Order 1995, SI 1995/1507.

As to the provisions which do not apply to Scotland see the Coal Industry Act 1994 s 68(7). The Coal Industry Act 1994 does not apply to Northern Ireland, with the exception of the following provisions: (1) ss 7-9, 12, 13, Sch 2; (2) ss 20, 21, Sch 4; (3) certain provisions of Sch 1; (4) certain provisions of Sch 9; (5) the repeal of certain enactments; (6) so much of Pt IV (ss 57-68) as is required for the purpose of giving effect to the extension to Northern Ireland of the provisions mentioned in the preceding paragraphs: s 68(8). The Act extends to the Isle of Man for the purpose of giving effect there to the repeal of the Territorial Sea Act 1987 s 2(3), to the Coal Industry Act 1994 s 67(7), Sch 10 para 10 and to so much of any restructuring scheme or any agreement under s 13 (see PARA 73 post) as relates to rights mentioned in Sch 10 para 10; and, subject to Sch 10 para 10, that repeal accordingly includes the repeal of the Territorial Sea Act 1987 s 2(3) as it extends to the Isle of Man by virtue of the Territorial Sea Act 1987 (Isle of Man) Order 1991, SI 1991/1722.

2 As to the Coal Authority see PARA 52 et seq post.

3 Coal Industry Act 1994, long title.

4 'Liability', in relation to the transfer of liabilities from one person to another or to the modification of any liability, does not include any criminal liability: *ibid* s 65(1). 'Modifications' includes additions, alterations and omissions: s 65(1).

5 As to the British Coal Corporation see PARAS 2-3 ante.

6 Coal Industry Act 1994, long title. 'Subsidiary' and 'wholly-owned subsidiary' have the same meanings given by the Companies Act 1985 s 736 (as substituted) (see COMPANIES vol 14 (2009) PARA 25): Coal Industry Act 1994 s 65(1).

7 Those powers and duties were imposed by the Coal Industry Nationalisation Act 1946 s 1(1)(a) (repealed), and ceased as from the restructuring date (ie 31 October 1994: see PARA 3 note 9 ante): Coal Industry Act 1994 s 7(2). For the meaning of 'Great Britain' see PARA 1 note 1 ante.

8 Ibid long title. As to the dissolution of the British Coal Corporation see PARA 89 post.

9 See ibid s 24; and PARA 90 post.

10 See ibid Pt II (ss 25-36) (as amended); and PARA 91 et seq post. 'Coal-mining operations' includes: (1) searching for coal and boring for it; (2) winning, working and getting it (whether underground or in the course of opencast operations); (3) bringing underground coal to the surface, treating coal and rendering it saleable; (4) treating coal in the strata for the purpose of winning any product of coal and winning, working or getting any product of coal resulting from such treatment; and (5) depositing spoil from any activities carried on in the course of any coal-mining operations and draining coal mines, and an operation carried on in relation to minerals other than coal is a coal-mining operation in so far as it is carried on in relation to those minerals as part of, or is ancillary to, operations carried on in relation to coal: s 65(1). 'Coal' means bituminous coal, cannel coal and anthracite: s 65(1). References to the treatment of coal in the strata are to be taken not to include references to any operations which (a) are carried on in relation to coal in or to which any oil or gas that exists in its natural condition in the strata is absorbed or adsorbed; and (b) are so carried on wholly for the purpose of winning or getting that oil or gas: s 65(2). 'Oil or gas' means (i) any mineral oil or any relative hydrocarbon which, in its natural state, is not a solid; or (ii) methane or any other natural gas: ss 9(6), 65(2).

11 Ibid long title. For the consequential changes to the law see s 52(2), Sch 8 (amendments to the Opencast Coal Act 1958: see PARA 404 et seq post); Coal Industry Act 1994 s 67(1), Sch 9 (minor and consequential amendments); s 67(7), Sch 10 (transitional provisions and savings); s 67(8), Sch 11 (repeals).

UPDATE

50 The Coal Industry Act 1994

NOTE 6--In definition of 'subsidiary' and 'wholly-owned subsidiary' reference to Companies Act 1985 s 736 now to Companies Act 2006 s 1159 (see COMPANIES vol 14 (2009) PARA 25): Coal Industry Act 1994 s 65(1) (definition amended by SI 2009/1941).

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51. The Secretary of State's power to make orders.

The Secretary of State¹ may, by order² made by statutory instrument³, make such consequential modifications⁴ of any provision contained in any Act passed before the relevant commencement date⁵ or in any subordinate legislation⁶ made before that date, as appear to him necessary or expedient (1) in respect of any reference in that Act or subordinate legislation to the British Coal Corporation⁷; (2) in respect of any reference (in whatever terms) in that Act or subordinate legislation to a person carrying on coal-mining operations⁸ or to such operations⁹; (3) in respect of any reference in that Act or subordinate legislation to any enactment repealed or amended by the Coal Industry Act 1994¹⁰; or (4) in the case of a provision contained in subordinate legislation, in respect of any other inconsistency between that subordinate legislation and the Coal Industry Act 1994¹¹.

If it appears to the Secretary of State to be appropriate to do so for the purposes of, or in consequence of, the coming into force of any enactment contained in the Coal Industry Act 1994¹², or in consequence of the effect or operation at any time after the restructuring date¹³ of any such enactment or of anything done under any such enactment¹⁴, he may by order made by statutory instrument repeal, amend or re-enact, with or without modifications, any provision contained in any local Act, whenever passed¹⁵.

1 As to the Secretary of State see PARA 4 ante.

2 An order may not be made under the Coal Industry Act 1994 s 67 for modifying any public general Act unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament: s 67(5).

3 A statutory instrument containing an order under *ibid* s 67 a draft of which is not required to have been laid before Parliament under s 67(5) (see note 2 *supra*) is subject to annulment in pursuance of a resolution of either House of Parliament: s 67(6).

4 As to the meaning of 'modifications' see PARA 50 note 4 ante.

5 For the purposes of the Coal Industry Act 1994 s 67(2), 'the relevant commencement date', in relation to any modifications, means the date of the coming into force of the provisions of the Coal Industry Act 1994 on which they are consequential: s 67(2). As to the dates on which the various provisions of the Coal Industry Act 1994 come into force see PARA 50 note 1 ante.

6 For the meaning of 'subordinate legislation' see the Interpretation Act 1978 s 21(1) (see STATUTES vol 44(1) (Reissue) PARAS 1232, 1381, 1499): Coal Industry Act 1994 s 65(1).

7 *Ibid* s 67(2)(a). As to the British Coal Corporation see PARAS 2-3 ante.

8 For the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

9 Coal Industry Act 1994 s 67(2)(b).

10 *Ibid* s 67(2)(c).

11 *Ibid* s 67(2)(d).

12 *Ibid* s 67(3)(a).

13 *Ie* 31 October 1994: see PARA 3 note 9 ante.

14 Coal Industry Act 1994 s 67(3)(b).

15 This includes, in the case of an order by virtue of s 67(3)(b), a provision amended by virtue of s 67(2) or s 67(3)(a): s 67(3). The power of the Secretary of State to make provision by an order under s 67(3) includes power: (1) to provide for general modifications of local Acts of a specified description and for modifications making different provision for different cases (s 67(4)(a)); (2) to make such supplemental, incidental, consequential and transitional provision as the Secretary of State considers appropriate in relation to any other provisions of such an order (s 67(4)(b)); and (3) in the case of an order made after the restructuring date, to require provision contained in the order to be treated as if it came into force on that date (s 67(4)(c)).

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(2) THE COAL AUTHORITY

(i) Establishment and Constitution

52. Establishment and purposes of the Coal Authority.

The Coal Industry Act 1994 established the Coal Authority¹ as a body corporate for the purpose of:

- 9 (1) holding, managing and disposing of interests² and rights in or in relation to the unworked coal³ and other property which is transferred to or otherwise acquired by it by or under the Act⁴;
- 10 (2) carrying out functions with respect to the licensing of coal-mining operations⁵;
- 11 (3) carrying out functions with respect to coal-mining subsidence and in connection with other matters incidental to the carrying on of any opencast or other coal-mining operations⁶;
- 12 (4) facilitating the establishment and maintenance of arrangements for the information to which persons are to be entitled under the Act to be made available to them⁷; and
- 13 (5) carrying out the other functions conferred on it by virtue of the Act⁸.

1 In the Coal Industry Act 1994, the Coal Authority is referred to as 'the Authority': see s 65(1). At the date at which this volume states the law, the principal office of the Coal Authority is 200 Lichfield Lane, Mansfield, Nottinghamshire NG18 4RG.

2 'Interest' in relation to land includes estate: *ibid* s 65(1). References to the creation, in favour of any person, of an interest in property include references to the vesting in that person of a freehold or leasehold interest in property: s 65(3).

3 For the meaning of 'coal' see PARA 50 note 10 ante.

4 Coal Industry Act 1994 s 1(1)(a).

5 *Ibid* s 1(1)(b). For the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

6 *Ibid* s 1(1)(c). As to subsidence by coal mining see PARA 202 et seq post.

7 *Ibid* s 1(1)(d).

8 *Ibid* s 1(1)(e).

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53. Relationship with the Crown.

The Coal Authority is not to be regarded as the servant or agent of the Crown, or as enjoying any status, immunity or privilege of the Crown; or by virtue of any connection with the Crown, as exempt from any tax, duty, rate, levy or other charge whatsoever, whether general or local; and nor is the Authority's property to be regarded as property of, or property held on behalf of, the Crown¹.

¹ Coal Industry Act 1994 s 1(5).

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54. Membership.

The Coal Authority consists of not less than two nor more than eight members appointed by the Secretary of State¹, who must designate one of the members so appointed as the chairman of the Authority and may, if he thinks fit, designate another such member as its deputy chairman². In appointing a person to be a member³ of the Authority, the Secretary of State must have regard to the desirability of appointing a person who has experience of, and has shown capacity in, some matter relevant to its functions⁴.

A member holds and vacates office in accordance with the terms of his appointment⁵. Any appointment of a person as a member is for a term not exceeding five years, but a person who ceases to be a member at the end of any such term is eligible for re-appointment⁶. A member may at any time by notice to the Secretary of State resign his office⁷. The Secretary of State may remove a member if he is satisfied that: (1) that member has been absent from meetings of the Authority for a period of more than three consecutive months without the Authority's permission; (2) that member has been adjudged bankrupt, that his estate has been sequestrated or that he has made a composition or arrangement with, or granted a trust deed for, his creditors; or (3) that member is unable or unfit to carry out the functions of a member⁸.

The Authority must pay to its members such remuneration, and such travelling and other allowances, as may be determined by the Secretary of State⁹ and, if so required by him, must pay such pension, allowances or gratuities to or in respect of a person who has been or is a member of the Authority, or such payments towards provision for the payment of a pension, allowances or gratuities to or in respect of such a person, as may be determined by the Secretary of State¹⁰. If, when any member of the Authority ceases to hold office, the Secretary of State determines that there are special circumstances which make it right that that member should receive compensation, the Authority must pay to him a sum by way of compensation of such amount as may be so determined¹¹.

1 Coal Industry Act 1994 s 1(2). As to the Secretary of State see PARA 4 ante.

2 Ibid s 1(3).

3 For the purposes of ibid s 1(6), Sch 1, 'member', in relation to the Coal Authority, includes its chairman and deputy chairman: Sch 1 para 12.

4 Ibid s 1(4).

5 Ibid Sch 1 para 1(1).

6 Ibid Sch 1 para 1(2).

7 Ibid Sch 1 para 1(3).

8 Ibid Sch 1 para 1(4).

9 Ibid Sch 1 para 2(1). The approval of the Treasury is required for the making of a determination under Sch 1 para 2: Sch 1 para 2(4). As to the power of a competent authority to determine the ambit of its own authority see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 21. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

10 Ibid Sch 1 para 2(2); and see note 9 supra.

- 11 Ibid Sch 1 para 2(3); and see note 9 supra.

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55. Staff.

The Coal Authority may, with the approval¹ of the Secretary of State² as to terms and conditions of service, appoint such officers and employees as it may determine³. No member of the Authority or other person may be appointed by the Authority to act as its chief executive unless the Secretary of State has consented to the appointment of that person⁴.

The Authority may pay such pensions, allowances or gratuities⁵ to or in respect of any persons who have been or are its officers or employees as it may, with the approval⁶ of the Secretary of State, determine⁷, and it may also make payments towards provision for the payment of such pensions, allowances or gratuities⁸, and provide and maintain schemes (whether contributory or not) for the payment of them⁹.

If any person on ceasing to hold any office or employment with the Authority, becomes or continues to be one of its members, and was, by reference to his office or employment with the Authority, a participant in a pension scheme maintained by the Authority for the benefit of any of its officers or employees, the Authority may, with the approval¹⁰ of the Secretary of State¹¹, make provision for him to continue to participate in that scheme, on such terms and conditions as it may with the consent of the Secretary of State determine, as if his service as a member were service as an officer or employee of the Authority¹².

1 The consent of the Treasury is required for the giving of an approval under the Coal Industry Act 1994 s 1(6), Sch 1 para 3 (as amended): Sch 1 para 3(9). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

2 As to the Secretary of State see PARA 4 ante.

3 Coal Industry Act 1994 Sch 1 para 3(1).

4 Ibid Sch 1 para 3(2).

5 Any reference in ibid Sch 1 para 3(3) to pensions, allowances or gratuities to or in respect of any such persons mentioned in Sch 1 para 3(3) includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any of the Authority's officers or employees who suffer loss of office or employment or loss or diminution of emoluments: Sch 1 para 3(4).

6 See note 1 supra.

7 Coal Industry Act 1994 Sch 1 para 3(3)(a).

8 Ibid Sch 1 para 3(3)(b).

9 Ibid Sch 1 para 3(3)(c).

10 See note 1 supra.

11 As to the Secretary of State see PARA 4 ante.

12 Coal Industry Act 1994 Sch 1 para 3(5). Any such provision is without prejudice to Sch 1 para 2 (see PARA 54 ante): Sch 1 para 3(5). In addition, service as an officer or employee of the Authority is included in the kinds of employment to which a scheme under the Superannuation Act 1972 s 1 (as amended) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567) can apply: see the Coal Industry Act 1994 Sch 1 para 3(6). The Authority must pay to the Treasury, at such times as the Treasury may direct, such sums as the Treasury may determine in respect of the increase in the sums payable out of money provided by Parliament under the Superannuation Act 1972: Coal Industry Act 1994 Sch 1 para 3(7). Where any person is both a member of the

Authority and a participant by reference to his service as an officer or employee of the Authority in a scheme under the Superannuation Act 1972 s 1 (as amended), the Treasury may determine that his service as such a member (including service before he became an officer or employee) is to be treated for the purposes of the scheme as service as an employee of the Authority: see the Coal Industry Act 1994 Sch 1 para 3(8). As to the financial provisions of the Coal Industry Act 1994 see s 62; and PARA 111 post.

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56. Proceedings.

Subject to certain provisions¹, the Coal Authority regulates its own procedure (including quorum)². Anything authorised or required by or under any enactment to be done by the Authority may be done by any of its members, officers or employees who has been authorised for the purpose, whether generally or specially, by the Authority³.

A member of the Authority who is in any way directly or indirectly interested in any matter that is brought up for consideration at a meeting must disclose the nature of his interest to the meeting⁴. Where such a disclosure is made, it must be recorded in the minutes of the meeting and the member in question must not take part in any deliberation or decision of the Authority with respect to that matter if either (1) it relates to any application made to the Authority or to any licence or contract which the Authority has granted or entered into or is considering granting or entering into⁵; or (2) the Authority determines that the nature of the matter, the extent of the member's interest and any prejudicial effect of his joining in the consideration of that matter are such that the member should not take part⁶.

The validity of any of the Authority's proceedings is not affected by a vacancy amongst its members, by any defect in the appointment of a member or by any contravention of the requirement⁷ relating to giving notice of interest⁸.

Minutes must be kept of its proceedings⁹, and are evidence of those proceedings if they are signed by a person purporting to have acted as chairman of the proceedings to which the minutes relate or of any subsequent proceedings in the course of which the minutes were approved as a correct record¹⁰.

The application of the Authority's seal must be authenticated by the signature¹¹ of any member, officer or employee of the Authority who has been authorised for the purpose, whether generally or specially, by the Authority¹². Every document purporting to be an instrument made or issued by or on behalf of the Authority and to be duly executed under its seal, or to be signed or executed by a person authorised by the Authority for the purpose, must be received in evidence and treated, without further proof, as being so made or issued unless the contrary is shown¹³.

1 Ie subject to the Coal Industry Act 1994 s 1(6), Sch 1 paras 5-12: see Sch 1 para 4.

2 Ibid Sch 1 para 4.

3 Ibid Sch 1 para 5.

4 Ibid Sch 1 para 6(1). For these purposes, a general notification given at a meeting of the Authority by any of its members to the effect that (1) he is a member of a specified body corporate or firm; and (2) he is to be regarded as interested in any matter involving that body or firm which falls to be considered after the giving of the notification, is to be regarded as a sufficient disclosure of his interest in relation to any such matter: Sch 1 para 6(3). A member who is required to make a disclosure at any meeting need not attend in person in order to make the disclosure if he takes reasonable steps to secure that the disclosure is made by a notice which is taken into consideration and read at the meeting: Sch 1 para 6(4).

5 Ibid Sch 1 para 6(2)(a).

6 Ibid Sch 1 para 6(2)(b).

7 Ibid Sch 1 para 6: see the text and notes 4-6 supra. 'Contravention' includes a failure to comply: s 65(1). The Coal Authority has adopted a Code of Practice in line with guidance set out in Annex C to the White Paper '*The Governance of Public Bodies: A Progress Report*' (Cm 3557) (1997).

8 Coal Industry Act 1994 Sch 1 para 7.

9 Ibid Sch 1 para 8(1).

10 Ibid Sch 1 para 8(2). Where minutes of any such proceedings have been so signed, those proceedings are, unless the contrary is shown, deemed to have been regularly convened and constituted: Sch 1 para 8(3).

11 For these purposes the reference to the signature of a person includes a reference to a facsimile of a signature by whatever process reproduced; and 'signed' is to be construed accordingly: *ibid* Sch 1 para 9(3).

12 Ibid Sch 1 para 9(1).

13 Ibid Sch 1 para 9(2).

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57. Finances and accounts.

The Secretary of State¹ may, after consultation with the Coal Authority, determine² the financial duties of the Authority, and different determinations may be made for different functions and activities of the Authority³. Such a determination may (1) relate to a period beginning before the date on which it is made⁴; (2) contain supplemental provisions⁵; and (3) be varied by a subsequent determination⁶. The Secretary of State must give the Authority written notice of every such determination and the Authority must conduct its finances in accordance with the determinations of which it has been given notice⁷.

The Secretary of State must, in respect of each accounting year⁸, pay to the Authority such amount as he may determine⁹ to be the amount required by the Authority for the carrying out during that year of its functions under the Coal Industry Act 1994¹⁰. Except so far as the Secretary of State may otherwise direct, sums received by the Authority in the course of carrying out its functions are to be paid by the Authority to the Secretary of State¹¹.

The Authority must keep proper accounts and records in relation to its accounts¹², and in respect of each accounting year, must prepare a statement of accounts in such form, and within such period after the end of that year, as the Secretary of State may, with the approval of the Treasury, direct¹³. On or before 31 August following the end of every accounting year, the Secretary of State must send a copy of that year's statement of accounts to the Comptroller and Auditor General¹⁴, who must examine, certify and report on the statement and lay copies of it and of his report before each House of Parliament¹⁵.

1 As to the Secretary of State see PARA 4 ante.

2 The approval of the Treasury is required for the making of a determination under the Coal Industry Act 1994 s 1(6), Sch 1 para 13: Sch 1 para 13(4).

3 Ibid Sch 1 para 13(1).

4 Ibid Sch 1 para 13(2)(a).

5 Ibid Sch 1 para 13(2)(b).

6 Ibid Sch 1 para 13(2)(c).

7 Ibid Sch 1 para 13(3).

8 For these purposes, 'accounting year' means the period beginning with the day on which the Authority is established (see PARA 52 ante) and ending with the financial year current on that date, and each successive financial year: ibid Sch 1 para 14(5). 'Financial year' means the 12 months ending with 31 March: s 65(1).

9 The approval of the Treasury is required for the making of a determination, or the giving of any direction, under ibid Sch 1 para 14: Sch 1 para 14(4). The Authority is required to set out in its annual report all determinations that are made under Sch 1 Pt II: see s 60(2)(a); and PARA 58 post.

10 Ibid Sch 1 para 14(1). Any sums required by the Secretary of State for making such a payment is to be paid out of money provided by Parliament: Sch 1 para 14(3).

11 Ibid Sch 1 para 14(2). Any sums so received by the Secretary of State are to be paid into the Consolidated Fund: Sch 1 para 14(3). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

12 Ibid Sch 1 para 15(1)(a).

13 Ibid Sch 1 para 15(1)(b). Before such date after the end of every accounting year as the Secretary of State may direct, the Authority must send to the Secretary of State a copy of the statement of accounts prepared in respect of that accounting year: Sch 1 para 15(2). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

14 Ibid Sch 1 para 15(3). As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

15 Ibid Sch 1 para 15(4). The Authority's annual report must incorporate the statement of accounts prepared by it in respect of the accounting year ending with the financial year in question, together with a copy of the report on those accounts which is required to be laid before Parliament under Sch 1 para 15(4): see s 60(2)(b); and PARA 58 post.

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58. Annual report on the activities of the Coal Authority.

As soon as reasonably practicable after the end of each financial year¹ the Coal Authority must prepare a report² on its activities during that year and send a copy to the Secretary of State³, who must, as soon as reasonably practicable after he has received it, lay a copy of it before each House of Parliament⁴. The Authority must arrange for copies of every annual report to be published in such manner as it considers appropriate for securing that the information contained in it is available to the persons likely to be interested in it⁵, and must also send the Secretary of State as many copies of the published report as he requires⁶.

1 For the meaning of 'financial year' see PARA 57 note 8 ante.

2 The Authority's annual report must set out (1) all directions under the Coal Industry Act 1994 ss 1(6), 6, 60, Sch 1 Pt II (see PARA 57 ante); and (2) all such determinations under Sch 1 Pt II (see PARA 57 ante), as have been given to it or made during the financial year to which the report relates: s 60(2)(a). It must incorporate the statement of accounts prepared by the Authority in respect of the accounting year ending with the financial year in question, together with a copy of the report on those accounts which is required to be laid before Parliament under Sch 1 para 15(4) (see PARA 57 ante): s 60(2)(b). The report must otherwise be in such form, and contain such information, as may be specified in a direction given to it by the Secretary of State: s 60(2)(c). As to the Secretary of State see PARA 4 ante. The information contained in the Authority's annual report must not include any information excluded by virtue of s 57(3) or s 57(4) (as amended) from the information which is to be made available in pursuance of arrangements under s 57 (as amended) (see PARA 109 post): s 60(3). However, this does not prevent the inclusion in the Authority's annual report of any information which has already been made public by virtue of any statutory provision: s 60(4). In consequence of the Coal Mining Subsidence Act 1991 s 49 (as amended) (see PARA 255 post), it is not necessary for the Authority's annual report to include any report on the operation of that Act: Coal Industry Act 1994 s 60(5).

3 Ibid s 60(1).

4 Ibid s 60(6).

5 Ibid s 60(7)(a).

6 Ibid s 60(7)(b).

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59. Coal-mining museum report.

The Secretary of State¹ must, in addition to laying the annual report on the activities of the Coal Authority² before Parliament, prepare and lay a report relating to coal-mining museums. He is required, as soon as reasonably practicable after the end of the period of three years beginning with the restructuring date³, to prepare and lay before Parliament a report setting out particulars of:

- 14 (1) the financial assistance provided during that period to coal-mining museums, so far as it has involved the making of payments for that purpose to any person by the Secretary of State⁴;
- 15 (2) the manner in which the provision of that financial assistance has been administered⁵; and
- 16 (3) the use to which that financial assistance has been put by the coal-mining museums which have received it⁶.

1 As to the Secretary of State see PARA 4 ante.

2 See PARA 58 ante.

3 Ie 31 October 1994: see PARA 3 note 9 ante.

4 Coal Industry Act 1994 s 61(a).

5 Ibid s 61(b).

6 Ibid s 61(c).

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(ii) Duties and Powers

60. Duties with respect to licensing.

The Coal Authority has two classes of duty which affect the manner in which it carries out its functions in relation to licensing coal-mining operations¹.

The first class comprises the duty of the Authority to carry out its licensing functions² in the manner that it considers is best calculated to secure, so far as practicable:

- 17 (1) that an economically viable³ coal-mining industry⁴ in Great Britain⁵ is maintained and developed by the persons authorised⁶ to carry on coal-mining operations⁷;
- 18 (2) that such persons are able to finance both the proper carrying on of the coal-mining operations that they are authorised to carry on and the discharge of liabilities arising from the carrying on of those operations⁸; and
- 19 (3) that persons to whom obligations are owed⁹ in respect of subsidence damage¹⁰ caused at any time¹¹ do not sustain loss in consequence of any failure by a person who is or has been a licensed operator¹² to make such financial provision for meeting present and future liabilities as might reasonably have been required of that person¹³.

The second class comprises the duty, subject to certain provisions¹⁴, of the Authority, in carrying out its licensing functions¹⁵, to have regard to the desirability of securing:

- 20 (a) that persons authorised¹⁶ to carry on coal-mining operations are persons who have at their disposal such experience and expertise in the carrying on of such operations as are appropriate for ensuring that any authorised operations are properly carried on¹⁷; and
- 21 (b) that competition is promoted between the different persons carrying on, or seeking to carry on, coal-mining operations¹⁸.

Similarly, it is also the duty of the Authority, in carrying out its licensing functions¹⁹ in cases where it appears that subsidence damage may be caused to any land or other property that does not consist in unworked coal²⁰ or in a coal mine²¹, to have regard to the extent of the damage which is likely to be caused, and to the character of the land or other property in question and to the uses to which it is or is likely to be put²².

1 The first class of duty is a positive duty to carry out various functions in the manner the Coal Authority considers best calculated to secure certain precise objectives (see the Coal Industry Act 1994 s 2(1); and the text to notes 2-13 *infra*). The second class is a less positive duty for the Authority merely to have regard to the desirability of securing certain less precise objectives (see s 2(2), (3); and the text to notes 14-22 *infra*). Quære whether the duty in s 2(1) would take priority over the duty in s 2(2). For the meaning of 'coal-mining operations' see PARA 50 note 10 *ante*.

2 *Id* under *ibid* Pt II (ss 25-36) (as amended) (see PARA 91 *et seq post*): s 2(1).

- 3 It is submitted that the words 'economically viable' given their ordinary meaning and applied to the industry as a whole, are not inconsistent with the failure of individual operators; cf *ibid* s 3(5); para 61 text to note 13 post. See also *Nocton Ltd v Water Hall Group plc* [1997] EGCS 97.
- 4 'Coal-mining industry' is not defined in the Coal Industry Act 1994.
- 5 For the meaning of 'Great Britain' see PARA 1 note 1 ante.
- 6 Ie authorised under the Coal Industry Act 1994 Pt II: see s 2(1)(a).
- 7 *Ibid* s 2(1)(a).
- 8 *Ibid* s 2(1)(b).
- 9 An obligation may be owed by virtue of *ibid* s 43 (see PARA 206 post) or contractually.
- 10 For the meaning of 'subsidence damage' see PARA 206 post. As to subsidence damage by coal mining see PARA 202 et seq post.
- 11 Ie whether before or after the passing of the Coal Industry Act 1994 (ie 5 July 1994): see s 2(1)(c).
- 12 'Licensed operator' means any person who is for the time being either (1) authorised by a licence under *ibid* Pt II to carry on coal-mining operations to which s 25 applies (see PARA 91 post); or (2) authorised by virtue of s 25(3) to carry on any such operations: s 65(1).
- 13 *Ibid* s 2(1)(c). As to subsidence provisions see ss 42-48; and PARA 205 et seq post.
- 14 Ie *ibid* s 4 (see PARA 62 post): see s 2(2).
- 15 See note 2 *supra*.
- 16 Ie by virtue of the Coal Industry Act 1994 Pt II: see s 2(2)(a).
- 17 *Ibid* s 2(2)(a).
- 18 *Ibid* s 2(2)(b).
- 19 See note 2 *supra*.
- 20 For the meaning of 'coal' see PARA 50 note 10 ante.
- 21 As to the meaning of 'coal mine' see PARA 5 note 15 ante.
- 22 Coal Industry Act 1994 s 2(3).

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61. Duties with respect to property.

It is the duty of the Coal Authority, in carrying out its functions¹ of holding, managing and disposing of interests and rights in or in relation to the unworked coal² and other property which is transferred³ to or otherwise acquired⁴ by it, to have regard to: (1) the need to co-ordinate its practice in relation to relevant property dealings⁵ with the carrying out of its licensing functions⁶; and (2) the need to secure the safety of members of the public⁷.

Subject to certain provisions⁸, it is the duty of the Authority, so far as practicable, to make available for acquisition by others such of its land and other property as (a) does not consist in an interest in any unworked coal or coal mine⁹; (b) is not being put to a use which justifies its retention by the Authority¹⁰; and (c) in the opinion of the Authority, is unlikely to be required for any such use¹¹.

Where the Authority disposes of any interests or rights in or in relation to any land or other property, it must secure the best terms reasonably available for the disposal¹², and, in the exercise and performance of its powers and duties with respect to its land and other property, it must have regard to the desirability of the exploitation, so far as that is economically viable¹³, of coal-bed methane in Great Britain¹⁴.

It is the duty of the Authority, in formulating any proposals for works on or in relation to any of its land or other property which has been (but is no longer) used for the carrying on of any coal-mining operations to (i) have regard to the desirability of preserving natural beauty, of conserving flora and fauna and geological or physiographical features of special interest and of protecting sites, buildings, structures and objects of architectural, historic or archaeological interest¹⁵; and (ii) take into account the effect of the proposals on the natural beauty of any area or on any such flora, fauna, features, sites, buildings, structures or objects¹⁶.

1 Ie the functions mentioned in the Coal Industry Act 1994 s 1(1)(a) (see PARA 52 ante): see s 3(1).

2 For the meaning of 'coal' see PARA 50 note 10 ante.

3 See the Coal Industry Act 1994 s 7(3); and PARA 67 post.

4 See *ibid* s 5(2) (see PARA 64 post); s 12 (see PARA 73 post).

5 For these purposes, 'relevant property dealings', in relation to the Coal Authority, means the grant of such interests and rights in or in relation to its land or other property as appear to it to be appropriate for the purpose of enabling or facilitating its use for, or in connection with, the carrying on of any coal-mining operations: *ibid* s 3(8). For the meaning of 'interest' see PARA 52 note 2 ante; and for the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

6 *Ibid* s 3(1)(a). The licensing functions referred to are those under Pt II (ss 25-36) (see PARA 91 et seq post): see s 3(1)(a).

7 *Ibid* s 3(1)(b).

8 Ie *ibid* s 3(4) (see the text and note 12 *infra*): see s 3(3).

9 *Ibid* s 3(2)(a). As to the meaning of 'coal mine' see PARA 5 note 15 ante.

10 *Ibid* s 3(2)(b). For the purposes of s 3(2) the only uses for land and other property which justify its retention by the Authority are: (1) use by any person for or in connection with the carrying on of any coal-mining operations; and (2) use by the Authority in connection with the administration of its own activities or

with the management of the land and other property which it is entitled to retain or is unable to dispose of: s 3(3). For this purpose the management of land and other property includes the performance of every obligation to which the Authority is subject in relation to any of that land or other property: s 3(3).

11 Ibid s 3(2)(c).

12 Ibid s 3(4).

13 See PARA 60 note 3 ante.

14 Coal Industry Act 1994 s 3(5). For the meaning of 'Great Britain' see PARA 1 note 1 ante. Section 3(4), (5) is subject to s 3(6), which provides that it is the duty of the Authority, in determining the terms on which it may dispose of any interest or right in or in relation to any unworked coal or coal mine to a person who requires the interest or right for purposes connected with activities to be carried on under the authority of a licence under the Petroleum Act 1998 s 3 (see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1639), to act in accordance with such arrangements and principles as it may, with the approval of the Secretary of State, have determined for the purposes of the Coal Industry Act 1994 s 3(5): s 3(6) (amended by the Petroleum Act 1998 s 50, Sch 4 para 38(2)). As to the Secretary of State see PARA 4 ante.

15 Coal Industry Act 1994 s 3(7)(a). As to areas of outstanding beauty see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 658 et seq; as to nature conservation see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 636 et seq; and as to ancient monuments and archaeological areas see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1002 et seq. See also TOWN AND COUNTRY PLANNING.

16 Ibid s 3(7)(b).

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62. Duty with respect to safety.

It is the Coal Authority's duty in conjunction with the Health and Safety Executive¹, to prepare and from time to time revise a document setting out such means as may, with the approval of the Health and Safety Commission², be agreed between the Authority and the Executive for securing co-operation and the exchange of information between them³; and without prejudice to the effect or operation of any relevant statutory provisions⁴ to conduct itself in the carrying out of its functions in accordance with any agreement contained in that document⁵.

As soon as practicable after agreement is reached for the purposes of the preparation or revision of such a document, the Authority must send a copy of the document or, as the case may be, of the revised version of it to the Secretary of State⁶, who must lay the copy before each House of Parliament⁷.

1 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

2 As to the Health and Safety Commission (abolished) see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 367.

3 Coal Industry Act 1994 s 4(1)(a).

4 In the meaning of the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) (see HEALTH AND SAFETY AT WORK): see the Coal Industry Act 1994 s 4(1)(b).

5 Ibid s 4(1)(b). The document contains undertakings:

- 7 (1) by the Coal Authority and the Health and Safety Executive to co-operate with each other on the exchange of information necessary to enable both organisations to carry out their functions efficiently and effectively, and to appoint liaison officers to be responsible for doing so;
- 8 (2) for the Coal Authority to provide the Health and Safety Executive with information relating to details of any licence application, licence granted, change of licensee and any other significant change to a licence; any permission to drill; details of any freehold sale of unworked coal and, at the request of the Health and Safety Executive, any other information in its possession which is of particular relevance to the health and safety of persons engaged in, or who may be affected by, coal-mining operations;
- 9 (3) for the Coal Authority to notify the Health and Safety Executive promptly of any information which comes to its attention which may be relevant to the health and safety of persons engaged in, or who may be affected by, coal-mining operations, and to notify any licensee of the name and address of the local Health and Safety Executive inspector;
- 10 (4) for the Health and Safety Executive to provide the Coal Authority with any information or technical advice reasonably requested by it in connection with its licensing functions (see PARA 60 ante) and property functions (see PARA 61 ante), including any action the Health and Safety Executive takes or proposes to take which may materially affect coal-mining operations, and any information on abandoned mines or other workings provided to the Health and Safety Executive; to draw the attention of the Coal Authority to any other information which it believes is relevant to the licensing and property functions of the Coal Authority, including details of any information received by the Health and Safety Executive of the start or cessation of coal-mining operations, or the abandonment of a mine or coal quarry.

The provision of information in head (2) supra is subject to the provisions of the Coal Industry Act 1994 s 57 (as amended) (see PARA 109 post), s 58 (see PARA 99 post), and s 59 (as amended) (see PARA 110 post).

The Agreement is to be reviewed annually, and may be amended or reviewed at any time by agreement of the Coal Authority and the Health and Safety Executive, subject to the agreement of the Health and Safety Commission.

6 As to the Secretary of State see PARA 4 ante.

7 Coal Industry Act 1994 s 4(2).

UPDATE

62 Duty with respect to safety

NOTE 2--The Health and Safety Commission was abolished as from 1 April 2008: see the Legislative Reform (Health and Safety Executive) Order 2008, SI 2008/960, art 2.

NOTE 3--1994 Act s 4(1)(a) amended: SI 2008/960.

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63. Duties in relation to subsidence damage.

The Coal Authority has a number of duties in relation to subsidence damage imposed upon it by the Coal Mining Subsidence Act 1991 and the Coal Industry Act 1994, including the duty to take appropriate action to remedy such damage and to provide such additional remedies as may be required from time to time¹; the duty to comply with the statutory requirements in relation to providing information relating to subsidence² and the forwarding of damage notices³; the duty of furnishing the subsidence adviser with information and assistance⁴ and complying with the statutory requirements relating to the subsidence adviser and the Arbitration Body⁵; making such reports as the Secretary of State⁶ may direct⁷; and maintaining drainage works in accordance with the Doncaster Area Drainage Act 1929⁸.

1 See PARA 205 et seq post. As to subsidence damage by coal mining see PARA 202 et seq post.

2 See PARA 209 post. As to the Coal Authority's duties in relation to making such information publicly available see PARA 109 post.

3 See PARA 212 post.

4 See PARA 210 post.

5 See PARAS 210, 252 post. As to the Arbitration Body see PARA 252 note 10 post.

6 As to the Secretary of State see PARA 4 ante.

7 See PARA 255 post.

8 See PARA 246 post.

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64. General powers.

Subject to certain restrictions¹, the Coal Authority has power to do anything which, in its opinion, is calculated to facilitate, or is conducive or incidental to, the carrying out of its functions². In addition to this general power, the Authority has certain express powers which may be exercised subject to restrictions³.

The Authority's powers include power, for the purposes of or in connection with the carrying out of its functions (1) to acquire land by agreement and to hold and dispose of land; and (2) in exercise of rights attached to its interests⁴ in land, or of any such rights in relation to other land as are granted to it by the owner or occupier, to carry out any works on or with respect to land⁵.

Where the Authority has land which it is required under the Coal Industry Act 1994 to make available for acquisition by others, its powers include: (a) power, in exercise of any rights attached to its interest in the land, to develop or improve the land, or to join with others in developing or improving the land, with a view to its disposal for use or enjoyment by another; and (b) power by agreement to acquire other land with a view (with or without developing or improving it) to disposing of the other land together with the land in question⁶.

The powers of the Authority include power to enter into arrangements with a person who is or has been a licensed operator⁷ to act on that person's behalf in relation to certain matters⁸, and also include power, where it provides a service to anyone in the course of the exercise or performance of its powers or duties, or receives any application for the grant of, or any offer for, any such interest or right in or in relation to any of its land or other property⁹ as may be required by any person for the purpose of exploring for coal¹⁰ or of carrying on coal-mining operations, to make a charge for the provision of that service or, as the case may be, for considering that application or offer¹¹.

1 Ie the Coal Industry Act 1994 s 5(6), (7) (see PARA 65 post): see s 5(1).

2 Ibid s 5(1). The Secretary of State has power to give the Coal Authority directions of a general character as to the carrying out of its functions: see s 6(1); and PARA 66 post. As to the Secretary of State see PARA 4 ante. As to the functions of the Coal Authority see PARA 52 ante.

3 For the Authority's express powers see ibid s 5(2)-(5); and the text and notes 4-11 infra. Section 5(2)-(5) is without prejudice to the generality of s 5(1): s 5(9). The powers contained in s 5(2) are subject to the restrictions of s 5(6), (7) (see PARA 65 post) and the powers contained in s 5(3) are subject to the restrictions of s 5(7) (see PARA 65 post).

4 As to the meaning of 'interest' see PARA 52 note 2 ante.

5 Coal Industry Act 1994 s 5(2).

6 Ibid s 5(3).

7 For the meaning of 'licensed operator' see PARA 60 note 12 ante. As to the licensing of coal-mining operations see PARA 91 et seq post. For the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

8 See the Coal Industry Act 1994 s 5(4). The matters referred to in the text are: (1) the giving and publication of notices under or for the purposes of s 38 (rights to withdraw support) (see PARA 178 et seq post) or s 49 (rights to work coal in former copyhold land) (see PARA 400 et seq post) or any provisions of the Coal Mining Subsidence Act 1991 (see PARA 203 et seq post); or (2) the handling of any matter arising under the 1991 Act and the performance of that person's obligations in relation to any subsidence damage: Coal Industry Act 1994 s 5(4).

- 9 As to the vesting of assets in the Coal Authority see PARA 67 post.
- 10 For the meaning of 'coal' see PARA 50 note 10 ante.
- 11 Coal Industry Act 1994 s 5(5).

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65. Restrictions affecting the Coal Authority's general powers.

The Coal Authority does not have power¹:

- 22 (1) for commercial purposes or with a view to itself using any coal² or product of coal, to carry on any coal-mining operations³ consisting in (a) the winning, working or getting (with or without other minerals⁴) of any coal⁵; (b) the treatment of coal in the strata⁶ for the purpose of winning any product of coal⁷; or (c) the winning, working or getting of any product of coal resulting from such treatment⁸; or
- 23 (2) with a view to any such operations being so carried on by the Authority or any other person, to explore for coal or⁹ to take any steps for the benefit of another for obtaining planning permission or any other authorisation required for carrying on coal-mining operations¹⁰.

The Authority may not, except with the agreement of the Secretary of State¹¹, acquire any land or acquire or hold shares in or other securities of any body corporate or otherwise become a member of a body corporate, or lend money to any person or guarantee or otherwise provide security for a loan made to any person¹².

1 As to the general powers of the Coal Authority see PARA 64 ante.

2 For the meaning of 'coal' see PARA 50 note 10 ante.

3 For the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

4 For the meaning of 'minerals' see PARA 12 ante.

5 Coal Industry Act 1994 s 5(6)(a)(i).

6 As to references to 'treatment of coal in the strata' see PARA 50 note 10 ante.

7 Coal Industry Act 1994 s 5(6)(a)(ii).

8 Ibid s 5(6)(a)(iii).

9 This is subject to ibid s 5(4) (see PARA 64 ante): see s 5(6)(b).

10 Ibid s 5(6)(b).

11 As to the Secretary of State see PARA 4 ante.

12 Coal Industry Act 1994 s 5(7). The consent of the Treasury is required for the giving of the Secretary of State's agreement under this provision: s 5(8). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

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66. Directions given to the Coal Authority by the Secretary of State.

The Coal Authority must comply with such directions of a general character as may be given to it by the Secretary of State¹ with respect to the carrying out of any of its functions, or to its activities generally². The Authority must also comply with such specific directions as may be given to it by the Secretary of State with respect to: (1) whether or not it exercises any of its powers and the manner in which any of its powers is to be exercised³; (2) the manner in which any of its duties is to be performed⁴; or (3) any other conduct by the Authority in connection with the carrying out of any of its functions or with its activities generally⁵.

Directions by the Secretary of State⁶ may be given, in relation to any information which is in the possession of or available to the Authority, requiring it to publish the information in such manner as may be described in the direction⁷. The Authority may also be required to furnish such information, together with such explanations as he may reasonably require, to the Secretary of State⁸. However, a direction may not authorise the publication of any information if, apart from the direction, the publication of that information would be in contravention⁹ of arrangements for keeping certain information confidential¹⁰.

Except in an emergency, the power to give a direction is exercisable only after consultation with the Authority¹¹.

1 As to the Secretary of State see PARA 4 ante.

2 Coal Industry Act 1994 s 6(1). As to the functions of the Coal Authority see PARA 52 ante.

3 Ibid s 6(2)(a).

4 Ibid s 6(2)(b).

5 Ibid s 6(2)(c).

6 Ie under ibid s 6: see s 6(3).

7 Ibid s 6(3)(a).

8 Ibid s 6(3)(b).

9 As to the meaning of 'contravention' see PARA 56 note 7 ante.

10 Coal Industry Act 1994 s 6(4). As to the duty to keep certain information confidential see s 59 (as amended); and PARA 110 post.

11 Ibid s 6(5).

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(iii) Vesting of Assets in the Coal Authority

67. Vesting of assets in the Coal Authority.

On the restructuring date¹ the British Coal Corporation's² interests in unworked coal³ and coal mines⁴, including its interests in any coal that (notwithstanding having been worked at some time) was so attached to or incorporated in any coal mine or other land as to be, in law, a part of it, vested without further assurance in the Coal Authority⁵.

Subject to certain provisions⁶, the interests in unworked coal and coal mines which vested in the Corporation immediately before the restructuring date were deemed to include: (1) the interests and rights of a freehold owner⁷ in and in relation to any such coal under the territorial sea adjacent to the United Kingdom⁸ as well as coal with respect to which the Corporation had rights⁹ immediately before that date¹⁰; and (2) the exclusive right, for the purposes of the rights of the United Kingdom¹¹ and without the consent of the Secretary of State, of authorising the carrying on, in relation to the coal in any designated area¹², of any of the coal-mining operations¹³ or of any operation carried on for the purpose of searching or boring for coal¹⁴.

1 le 31 October 1994: see PARA 3 note 9 ante. In appointing a date as the restructuring date, the Secretary of State had to be satisfied that such schemes were or were to be made under the Coal Industry Act 1994 s 12 (see PARA 73 post) as would ensure that the Coal Authority would be entitled or subject, from that date, to all such property, rights and liabilities as it would require for carrying out the functions which were to become its functions on that date: see s 7(5). As to the Secretary of State see PARA 4 ante.

2 In the Coal Industry Act 1994, the British Coal Corporation is referred to as 'the Corporation': see s 65(1). As to the British Coal Corporation see PARAS 2-3 ante.

3 For the meaning of 'coal' see PARA 50 note 10 ante.

4 As to the meaning of 'coal mine' see PARA 5 note 15 ante.

5 Coal Industry Act 1994 s 7(3). This provision has effect subject to ss 8, 9 (as amended) (see PARAS 68-70 post) and to the powers conferred by virtue of s 12(1) (see PARA 73 post): s 7(4). The ownership of unworked coal which had been alienated by the Coal Commission under the Coal Act 1938 s 17(3) (repealed) did not vest in the National Coal Board (later renamed the British Coal Corporation: see PARA 2 ante) under the Coal Industry Nationalisation Act 1946 s 5, Sch 1 (repealed) and so did not pass to the Coal Authority under the Coal Industry Act 1994 s 7(3). Accordingly, such coal remains in private hands.

6 le *ibid* s 9 (as amended) (see PARAS 69-70 post): see s 8(1).

7 References in *ibid* s 8 (as amended) to the interests and rights of a freehold owner are to be construed, in relation to any coal the interests or rights in or in relation to which fall to be determined according to the law of Scotland, as references to the interests and rights of an owner: s 8(6) (amended by the Abolition of Feudal Tenure etc (Scotland) Act 2000 s 76(1), Sch 12 para 56(1), (2)).

8 For the meaning of 'United Kingdom' see PARA 1 note 1 ante.

9 le by virtue of the Continental Shelf Act 1964 s 1 (as amended) (see PARA 26 ante) as read with the Territorial Sea Act 1987 s 2(3) (prospectively repealed: see PARA 50 note 1 ante): see the Coal Industry Act 1994 s 8(1)(a).

10 *Ibid* s 8(1)(a).

11 le mentioned in the Continental Shelf Act 1964 s 1(1) (see PARA 26 ante): see the Coal Industry Act 1994 s 8(1)(b).

12 For these purposes, 'designated area' means any area which is for the time being both outside the territorial sea adjacent to the United Kingdom and comprised in an area designated (whether before or after the beginning of the restructuring date) under the Continental Shelf Act 1964 s 1(7) (as amended) (see PARA 26 ante); Coal Industry Act 1994 s 8(5).

13 The coal-mining operations to which *ibid* s 25 (see PARA 91 post) applies: see s 8(1)(b). As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

14 *Ibid* s 8(1)(b). Section 7(3) does not vest in the Authority any interest or rights in or in relation to any coal or coal mines outside Great Britain and the territorial sea adjacent to Great Britain except those mentioned in s 8(1)(b): see s 8(2); and PARA 69 post. As to the future vesting of coal beneath extensions to the territorial sea see PARA 68 post.

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68. Future vesting of coal beneath extensions to territorial sea.

Where, on the coming into force on or after the restructuring date¹ of any relevant Order in Council², any area outside the United Kingdom³ and the territorial sea adjacent to the United Kingdom is brought within that territorial sea, that Order in Council has the effect of vesting the interests and rights of a freehold owner⁴ in and in relation to coal⁵ under the seabed in that area in such person as may be specified in the Order in Council or, if no person is so specified, in the Coal Authority⁶. However, nothing is to be vested in any person⁷ which would have been excluded⁸, had the Order in Council come into force before the restructuring date, from the interests and rights which were deemed to be vested in the British Coal Corporation immediately before that date⁹.

1 Ie 31 October 1994: see PARA 3 note 9 ante.

2 Ie under the Territorial Sea Act 1987 s 1 (see WATER AND WATERWAYS vol 100 (2009) PARA 31): see the Coal Industry Act 1994 s 8(3).

3 For the meaning of 'United Kingdom' see PARA 1 note 1 ante.

4 As to the interests and rights of a freehold owner see PARA 67 note 7 ante.

5 For the meaning of 'coal' see PARA 50 note 10 ante.

6 Coal Industry Act 1994 s 8(3).

7 Ie by virtue of *ibid* s 8(3): see s 8(4).

8 Ie by virtue of *ibid* s 9 (as amended) (see PARAS 69-70 post): see s 8(4).

9 Ibid s 8(4). As to the British Coal Corporation see PARAS 2-3 ante.

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69. Exclusions from vesting of coal.

Interests¹ or rights in or in relation to any coal² or coal mines³ outside Great Britain⁴ and the territorial sea adjacent to Great Britain, with the exception of the exclusive right⁵ without the consent of the Secretary of State⁶ of authorising the carrying on, in relation to the coal in any designated area⁷, of any of the coal-mining operations⁸ or of any operation carried on for the purpose of searching or boring for coal⁹, were excluded from vesting¹⁰ in the Coal Authority¹¹.

The interests and rights which were vested or deemed to be vested in the British Coal Corporation¹² immediately before the restructuring date¹³ are declared not to have included: (1) any interest in, or any entitlement to an interest in, any oil or gas¹⁴ which, in its natural condition in strata, is or becomes absorbed in or adsorbed to any coal¹⁵; or (2) any right, without a licence¹⁶, to search for, bore for or get any oil or gas which is or becomes so absorbed or adsorbed¹⁷. Accordingly, nothing in any enactment or subordinate legislation relating to interests in or in relation to any coal, or in or in relation to any oil or gas is to be taken to have prevented any such interest as is mentioned in head (1) above from having become or from continuing to be an interest or entitlement of the Crown¹⁸. Those exclusions¹⁹ do not give rise to any liability in respect of the winning, working, treatment, getting or disposal of (a) any of that coal having oil or gas occluded in it at the time of its being brought from the strata to the surface or, as the case may be, of its treatment in the strata²⁰; or (b) any product of that coal resulting from any such treatment, where the coal in question was won, worked, treated or got in pursuance of any interests or rights which were vested or deemed to be vested in the British Coal Corporation immediately before the restructuring date²¹.

1 As to the meaning of 'interest' see PARA 52 note 2 ante.

2 For the meaning of 'coal' see PARA 50 note 10 ante.

3 As to the meaning of 'coal mine' see PARA 5 note 15 ante.

4 For the meaning of 'Great Britain' see PARA 1 note 1 ante.

5 Ie for the purposes of the rights of the United Kingdom mentioned in the Continental Shelf Act 1964 s 1(1) (see PARA 26 ante): see the Coal Industry Act 1994 s 8(1)(b). For the meaning of 'United Kingdom' see PARA 1 note 1 ante.

6 As to the Secretary of State see PARA 4 ante.

7 For the meaning of 'designated area' see PARA 67 note 12 ante.

8 As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

9 See the Coal Industry Act 1994 s 8(1)(b).

10 Ie under ibid s 7(3) (see PARA 67 ante): see s 8(2).

11 Ibid s 8(2).

12 As to the British Coal Corporation see PARAS 2-3 ante.

13 Ie 31 October 1994: see PARA 3 note 9 ante.

14 For the meaning of 'oil or gas' see PARA 50 note 10 ante.

15 Coal Industry Act 1994 s 9(1)(a).

16 Ie under the Petroleum Act 1998 s 3: see the Coal Industry Act 1994 s 9(1)(b) (as amended: see note 17 infra). As to the grant of such licences see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1639 et seq.

17 Ibid s 9(1)(b) (amended by the Petroleum Act 1998 s 50, Sch 4 para 38(3)(b)). This provision is expressed to be without prejudice to the Petroleum Act 1998 s 9(1) which provides that nothing in that Act is to be construed as imposing any liability on any person where petroleum is set free in the course of mining and other lawful operations (see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1635): see the Coal Industry Act 1994 s 9(1) (amended by the Petroleum Act 1998 s 50, Sch 4 para 38(3)(a)).

18 Coal Industry Act 1994 s 9(2).

19 Ie the exclusions confirmed by virtue of ibid s 9(1), (2) (s 9(1) as amended).

20 As to the meaning of 'treatment of coal in the strata' see PARA 50 note 10 ante.

21 Coal Industry Act 1994 s 9(3).

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70. Exploitation of oil and gas in coal mines.

So long as the Coal Authority retains the interest¹ of a freehold owner in any coal² or coal mine³ vested in it⁴, it is entitled by virtue of such ownership to grant such rights in relation to that coal or coal mine as are required by any person for the purpose, under the authority of any licence⁵, of searching for, boring for or getting any oil or gas⁶ in that coal or coal mine⁷. Such a grant is, in favour of that person, binding on any other person who has or acquires an interest or right in or in relation to the coal or coal mine in question; but is without prejudice, in a case where there is a person other than the Authority with an interest or right in that coal or coal mine at the time of the grant, to any such person's rights as against the Authority in respect of: (1) any interference by virtue of the grant with the enjoyment of his interest or right; or (2) any contravention of an undertaking given in relation to that interest or right⁸.

1 As to the meaning of 'interest' see PARA 52 note 2 ante.

2 For the meaning of 'coal' see PARA 50 note 10 ante.

3 As to the meaning of 'coal mine' see PARA 5 note 15 ante.

4 Ie by virtue of the Coal Industry Act 1994 s 7(3) (see PARA 67 ante).

5 Ie a licence which has been or may be granted to that person under the Petroleum Act 1998 s 3: see the Coal Industry Act 1994 s 9(4) (as amended: see note 7 infra). As to the grant of such licences see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1639 et seq.

6 For the meaning of 'oil or gas' see PARA 50 note 10 ante.

7 Coal Industry Act 1994 s 9(4) (amended by the Petroleum Act 1998 s 50, Sch 4 para 38(3)(b)).

8 Coal Industry Act 1994 s 9(5). As to the meaning of 'contravention' see PARA 56 note 7 ante.

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71. Protection for certain interests in coal and coal mines.

Where the ownership¹ of any coal or coal mine was vested in the British Coal Corporation² immediately before the restructuring date³, and has not, at any time on or since that date, become vested in a person other than the Corporation or the Coal Authority by virtue of being conveyed or transferred to that person either by the Authority or the Corporation, or in accordance with a restructuring scheme⁴, there are certain protections against acquisition⁵.

First, no interest or right adverse to the title of the Authority or the Corporation in any such coal or coal mine⁶ is capable of being acquired under the provisions concerning time limits on actions to recover land and extinction of titles⁷. Secondly, subject to an exception relating to compulsory purchase for purposes of underground gas storage⁸, where any power to acquire land compulsorily is conferred by or under any enactment⁹, that power is not exercisable on or after the restructuring date in respect of any such coal or coal mine except in so far as (1) the coal is coal that it is necessary to dig or carry away in the course of operations for the purposes of which the power is conferred; or (2) the coal mine is one that it is necessary to use in the course of any such operations¹⁰.

These protections¹¹, in their application to England and Wales, do not restrict the acquisition of any such liberty, privilege, easement, advantage or other right¹² as adversely affects any such coal or coal mine¹³ and is either annexed to any land or, without being so annexed, is acquired under any enactment¹⁴.

1 This reference to the ownership of any coal or coal mine is a reference, in relation to England and Wales, to the interest of the freehold owner of that coal or coal mine: Coal Industry Act 1994 s 10(7)(a). For the meaning of 'coal' see PARA 50 note 10 ante; as to the meaning of 'coal mine' see PARA 5 note 15 ante; and as to the meaning of 'interest' see PARA 52 note 2 ante.

2 As to the British Coal Corporation see PARAS 2-3 ante.

3 Ie 31 October 1994: see PARA 3 note 9 ante.

4 As to restructuring schemes see PARA 73 post.

5 See the Coal Industry Act 1994 s 10(1).

6 Ie any coal or coal mine to which *ibid* s 10 applies: see s 10(2).

7 *Ibid* s 10(2)(a). The provisions referred to are the Limitation Act 1980 s 15 or s 17 (as amended) (see LIMITATION PERIODS vol 68 (2008) PARAS 1016, 1095): see the Coal Industry Act 1994 s 10(2)(a).

8 The exception mentioned in the text is in relation to the power under the Gas Act 1965 s 13(8) (as amended) (see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 997) which may be conferred on a public gas supplier to acquire compulsorily for purposes connected with underground gas storage land which is the site of a well, borehole or shaft: see the Coal Industry Act 1994 s 10(3).

9 This includes, unless it otherwise provides, an enactment passed after 5 July 1994 (ie the date of the passing of the Coal Industry Act 1994): see s 10(3).

10 *Ibid* s 10(3).

11 Ie *ibid* s 10(2), (3): see s 10(4).

12 For these purposes the reference to a liberty, privilege, easement, advantage or other right being annexed to any land is a reference to its appertaining to that land or any part of it, to its being demised,

occupied or enjoyed with that land or any part of it or to its being reputed or known as part or parcel of the land or as appurtenant to the land or to any part of it: *ibid* s 10(6).

13 See note 6 *supra*.

14 Coal Industry Act 1994 s 10(4).

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(3) RESTRUCTURING OF THE BRITISH COAL CORPORATION'S UNDERTAKING

(i) In general

72. Restructuring of the functions of the British Coal Corporation.

Since the restructuring date¹ the British Coal Corporation² has continued to exist³ but with its functions confined to: (1) carrying on its undertaking⁴ for the time being; and (2) managing and otherwise dealing with the interests and rights in or in relation to property which are for the time being vested in it, in such manner as, having regard to what is economically viable, it considers best calculated for securing the following purposes⁵:

- 24 (a) that all of the Corporation's undertaking and property is in due course transferred out of the ownership and control of the Corporation⁶;
- 25 (b) that any transfers for the removal of any of that undertaking or property from the ownership or control of the public sector are on the best available terms⁷; and
- 26 (c) that the Corporation's undertaking and property are put to the best available use for so long as they remain in its ownership or under its control⁸.

Where the Secretary of State⁹ notifies his opinion to the Corporation as to (i) what is economically viable in any case; (ii) the activities most likely to secure that any transfer for the removal of any of the Corporation's undertaking, or any property, from the ownership or control of the public sector are to be on the best available terms; or (iii) the best available use to which any of the Corporation's undertaking or property may be put while owned by or under the control of the Corporation, the Corporation is required to accept that opinion¹⁰.

It is the duty of the Corporation to comply with such general or specific directions with respect to the exercise of any of its powers, or otherwise with respect to the carrying on of any of its activities, which may be given to it at any time by the Secretary of State¹¹.

Since the restructuring date, certain of the Corporation's powers continue to be exercisable by it for the purposes of carrying out its reduced functions until its eventual dissolution¹². Since various restructuring schemes¹³ have now transferred its property, rights and liabilities to other parties¹⁴, the Corporation has been reduced to a mere formal existence as a shell and its only real function now is to hold and deal with any residual liabilities which it may be found to have retained notwithstanding the restructuring schemes¹⁵.

1 Ie 31 October 1994: see PARA 3 note 9 ante.

2 As to the British Coal Corporation see PARAS 2-3 ante.

3 Ie until its eventual dissolution on the dissolution date: see PARA 3 note 25 ante. As to the dissolution of the British Coal Corporation see PARA 89 post.

4 'Undertaking', in relation to the British Coal Corporation, includes the undertakings of its wholly-owned subsidiaries: Coal Industry Act 1994 s 65(1). For the meanings of 'subsidiary' and 'wholly-owned subsidiary' see PARA 50 note 6 ante.

5 Ibid s 11(1). This provision is without prejudice to any powers conferred on the Corporation by the British Coal and British Rail (Transfer Proposals) Act 1993: Coal Industry Act 1994 s 11(9). The British Coal and British Rail (Transfer Proposals) Act 1993 is repealed in so far as it relates to the British Coal Corporation by the Coal Industry Act 1994 s 67(8), Sch 11 Pt III as from a day to be appointed under s 68. At the date at which this volume states the law no such day had been appointed.

The requirement for the matters secured under the Coal Industry Nationalisation Act 1946 s 1(4) (as amended) (see PARA 2 ante), which specifies policy objectives for the Corporation, to be secured consistently with the proper discharge of the Corporation's duties under s 1(1) (repealed) has effect since the restructuring date as a requirement for those matters to be secured consistently with the carrying out of the Corporation's functions under the Coal Industry Act 1994 s 11(1): s 11(5). The Coal Industry Nationalisation Act 1946 s 1(2)-(4) (as amended) is repealed by the Coal Industry Act 1994 Sch 11 Pt IV as from the dissolution date: see PARAS 3 note 25 ante, 89 post.

6 Ibid s 11(2)(a).

7 Ibid s 11(2)(b).

8 Ibid s 11(2)(c).

9 As to the Secretary of State see PARA 4 ante.

10 Coal Industry Act 1994 s 11(3). The consent of the Treasury is required for the giving of any such notification; and the power of the Secretary of State to give such a notification is exercisable, except in an emergency, only after consultation with the Corporation: see s 11(8). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

11 Ibid s 11(7). The Secretary of State's power to give such directions is exercisable, except in an emergency, only after consultation with the Corporation: see s 11(8). As to agreements binding the manner and circumstances in which the Secretary of State exercised his power to give such directions see s 13; and PARA 73 post.

12 See ibid s 11(4). The powers referred to are as follows: (1) the powers conferred on the Corporation by the Coal Industry Nationalisation Act 1946 s 1(2) (as amended and prospectively repealed: see note 5 supra) (incidental activities) and described there as functions; (2) those conferred on the Corporation by s 1(3) (as amended and prospectively repealed: see note 5 supra) (power to enter into certain transactions); and (3) a power, so far as not comprised in the powers mentioned in heads (1) and (2) supra, to carry on any activities consisting in or connected with the working or getting of coal: Coal Industry Act 1994 s 11(4). As to the Corporation's powers and functions under the Coal Industry Nationalisation Act 1946 s 1(2)-(4) (as amended and prospectively repealed) see PARA 2 ante. However, since the restructuring date the Corporation (a) has not been entitled to carry on any coal-mining operations in respect of which a licence under the Coal Industry Act 1994 Pt II (ss 25-36) (as amended) is required except under and in accordance with such a licence; (b) no longer has the powers with respect to petroleum conferred on it by the National Coal Board (Additional Powers) Act 1966 (repealed) and the Coal Industry Act 1977 s 9 (repealed) (see PARA 2 ante); and (c) has no power, by virtue of the Coal Industry Act 1994 s 11(1)-(5) to carry on any business which it would not have had power to carry on apart from that Act: s 11(6). 'Business' includes any trade or profession: s 65(1).

13 As to restructuring schemes see PARA 73 post.

14 Eg to the successor companies (see PARAS 3 ante, 75 post), the Coal Authority (see PARA 52 et seq ante) and the Secretary of State (see PARA 4 ante).

15 See further PARA 73 post.

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73. Restructuring schemes.

The Secretary of State¹ had power, at any time before the restructuring date², to make a restructuring scheme³ providing for the creation, as from that date, in favour of the British Coal Corporation⁴, or any person to whom any part of the Corporation's undertaking⁵ was to be transferred on that date in accordance with such a scheme, of such interests⁶ and rights in or in relation to any of the property transferred⁷ to the Coal Authority as he thought appropriate for the purposes of the Corporation's functions on and after that date or for the purposes of the carrying on by that person of the part of the Corporation's undertaking which was to be transferred to him⁸.

In addition, the Secretary of State may from time to time make a scheme for the transfer of property, rights and liabilities⁹ from the Corporation or any of its wholly-owned subsidiaries¹⁰ to the Authority or to any one or more other persons who have entered into an agreement¹¹ to accept the transfers; or who otherwise appear to him to be persons in whom it is appropriate to vest the property, rights and liabilities in question¹². However, a restructuring scheme must not¹³ contain any provision in accordance with which any person other than the Secretary of State, the Coal Authority, the British Coal Corporation or any of its wholly-owned subsidiaries, or a company wholly owned by the Crown¹⁴, becomes entitled or subject to any property, rights or liabilities unless it appears to the Secretary of State that that person consented to the provisions of the scheme so far as they relate to him¹⁵. However, the consent of any person is not required to so much of any restructuring scheme as relates to property, rights or liabilities to which that person is already entitled or subject; and appears to the Secretary of State to be made for purposes that are no more than supplemental or incidental to the other provisions of the scheme¹⁶.

The Secretary of State, in exercising his powers to make a restructuring scheme in accordance with which any person other than (1) the Secretary of State, the Coal Authority, the British Coal Corporation or any of its wholly-owned subsidiaries, or a company wholly owned by the Crown; or (2) a body of whom all the members are appointed by a Minister of the Crown, becomes subject to any liabilities, must have regard to the fact that it would not be appropriate for the scheme to provide for the transfer of any of those liabilities to any person except where it is reasonable to believe that that person is a person able to finance their discharge¹⁷.

The Secretary of State must retain and preserve a copy of every restructuring scheme¹⁸ and, at the request of any person who, in accordance with such a scheme, has become entitled to any interest or right in or in relation to any property, must furnish that person with a list of the names and addresses of the other persons who have become entitled to interests or rights in or in relation to property in accordance with that or with any other such scheme¹⁹.

Specific provision is made in the Coal Industry Act 1994 for the organisation of restructuring schemes²⁰. In particular, provision is made for: regulating their contents and effect²¹; the division of property by such schemes²²; the property to which a scheme may relate²³; supplemental provisions of schemes²⁴; duties in relation to foreign property²⁵; the modification of the effect of a scheme by agreement²⁶; the application of transfer of undertakings provisions²⁷; compensation²⁸; and the notice to be given to persons affected by a scheme²⁹. Provision is also made in the Coal Industry Act 1994 for the treatment for taxation purposes of property transferred by a restructuring scheme to a public-sector body³⁰.

The Secretary of State may enter into any such agreement with another person as he thinks fit for the purpose of accepting or imposing contractual obligations with respect to anything connected with: (a) the manner and circumstances in which his powers relating to restructuring schemes³¹ are to be exercised; and (b) the property, rights or liabilities to which any proposed restructuring scheme relates³².

The Corporation and the Authority must furnish the Secretary of State with all the information and other assistance he requires to make a restructuring scheme or agreement³³, or to exercise any of his powers in relation to any such scheme³⁴.

At the date at which this volume states the law the majority of the property, rights and liabilities of the British Coal Corporation had been transferred by a succession of such restructuring schemes. The residuary body that remains is managed by the Department of Trade and Industry and will eventually be dissolved³⁵.

1 As to the Secretary of State see PARA 4 ante.

2 1e 31 October 1994: see PARA 3 note 9 ante.

3 'Restructuring scheme' means a scheme under the Coal Industry Act 1994 s 12: s 65(1). The consent of the Treasury was required for the making of any such scheme: Coal Industry Act 1994 s 12(3). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

4 As to the British Coal Corporation see PARAS 2-3 ante.

5 As to the meaning of 'undertaking' see PARA 72 note 4 ante.

6 As to the creation of an interest in property see *ibid* s 65(3); and PARA 52 ante. As to the meaning of 'interest' see PARA 52 note 2 ante.

7 1e under the Coal Industry Act 1994 s 7(3) (see PARA 67 ante): see s 12(1).

8 *Ibid* s 12(1).

9 As to the meaning of 'liability' see PARA 50 note 4 ante.

10 For the meanings of 'subsidiary' and 'wholly-owned subsidiary' see PARA 50 note 6 ante.

11 1e under the Coal Industry Act 1994 s 13 (see the text to notes 30-31 *infra*): see s 12(2).

12 *Ibid* s 12(2). The persons to whom a transfer may be made by virtue of head (1) in the text include the Secretary of State himself: s 12(2).

13 1e by virtue of *ibid* s 12(2): see s 12(4).

14 A company is to be regarded as wholly owned by the Crown at any time if it is: (1) a company limited by shares in which there are at that time no issued shares held otherwise than by, or by a nominee of, the Treasury, the Secretary of State or any other company wholly owned by the Crown; or (2) a company limited by guarantee of which no person other than the Treasury or the Secretary of State, or a nominee of the Treasury or the Secretary of State, is a member: *ibid* s 65(4). 'Company' has the same meaning as in the Companies Act 1985 (see generally COMPANIES vol 14 (2009) PARA 24): Coal Industry Act 1994 s 65(1).

15 *Ibid* s 12(4).

16 *Ibid* s 12(5).

17 *Ibid* s 12(6).

18 *Ibid* s 12(7)(a).

19 *Ibid* s 12(7)(b).

20 See *ibid* s 12(8), Sch 2.

21 See *ibid* Sch 2 para 1.

22 See *ibid* Sch 2 para 2.

23 See *ibid* Sch 2 para 3.

24 See *ibid* Sch 2 para 4.

25 See *ibid* Sch 2 para 5.

26 See *ibid* Sch 2 para 6. As to the meaning of 'modifications' see PARA 50 note 4 ante.

27 See *ibid* Sch 2 para 7; and the Transfer of Undertakings (Protection of Employment) Regulations 1981, SI 1981/1794 (as amended). As to transfers of undertakings generally see EMPLOYMENT vol 39 (2009) PARA 111 et seq.

28 Coal Industry Act 1994 Sch 2 para 8.

29 *Ibid* Sch 2 para 9.

30 See *ibid* s 21, Sch 4 (as amended). 'Public-sector body' means the Treasury or any Minister of the Crown, the Coal Authority, a local authority, any company which is wholly owned by the Crown or any body which is not a company but is established by or under any enactment for the purpose of carrying out functions conferred on it by any enactment or subordinate legislation: Sch 4 para 1(2).

In particular, provision is made in relation to corporation tax (including provisions relating to chargeable gains (see Sch 4 paras 2-10); transfers of trading stock (see Sch 4 para 11); transfer of rights to receipts (see Sch 4 para 12); transfer of liabilities (see Sch 4 para 13); losses to be retained by the predecessor (see Sch 4 para 14); charges on leases granted at an undervalue (see Sch 4 para 15); group relief (see Sch 4 para 16); special provision for successor companies (see Sch 4 para 17); leased assets (see Sch 4 para 18); capital allowances (see Sch 4 paras 19-22) (amended by the Capital Allowances Act 2001 s 578, Sch 2 para 93(2)-(14)); exchange gains and losses (see the Coal Industry Act 1994 Sch 4 para 23); transfers of property in coal and lease back (see Sch 4 para 24); modifications of restructuring schemes (see Sch 4 para 25); and stamp duty and stamp duty reserve tax (see Sch 4 paras 26-28).

31 *Ie* by virtue of *ibid* s 12 (see the text to notes 1-20 supra): see s 13(1).

32 *Ibid* s 13(1). Such an agreement may provide for the making of payments to the Corporation or the Secretary of State (by way of consideration or otherwise) in respect of anything created or transferred in accordance with a restructuring scheme (s 13(2)) and may also contain provision in pursuance of which the Secretary of State binds himself as to the manner and circumstances in which he exercises his power to give directions under s 11(7) (see PARA 72 ante) (s 13(3)). The consent of the Treasury was required for the making of such an agreement: s 13(4). Any sums received by the Secretary of State in pursuance of such an agreement are to be paid into the Consolidated Fund: s 13(5). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

33 *Ie* under *ibid* s 13: see s 14(1).

34 *Ibid* s 14(1). Such assistance includes: (1) assistance required by the Secretary of State in connection with the exercise of any power conferred on him by s 26(6) (see PARA 92 post); and (2) the taking of any step which the Corporation has power to take for the purpose of facilitating the implementation of any proposals of the Secretary of State which involve the inclusion of anything in the scheme or agreement or otherwise relate, in connection with the making of the scheme or agreement, to the Corporation's undertaking: s 14(2). The obligations of the Corporation under s 14 include a duty to secure, so far as practicable, that its subsidiaries furnish all such information and assistance as the Secretary of State requires to make any such scheme or agreement, or to exercise any such power: s 14(3). A duty to furnish information or assistance, or to secure that it is furnished, must be performed within such period after the requirement giving rise to the duty as the Secretary of State may allow: s 14(4).

35 See 584 HL Official Report (5th series), 17 December 1997, written answers col 88. The future management of the British Coal Corporation is provided from within the Department of Trade and Industry (Coal Directorate): see 305 HC Official Report (6th series), 5 February 1998, written answers cols 785-786. As to the dissolution date see PARAS 3 note 25 ante, 89 post.

UPDATE

73 Restructuring schemes

NOTES--The Companies Acts (as defined by the Companies Act 2006 s 2) have effect in relation to a company that is wholly owned by the Crown, and has been notified by the Secretary of State that it is a company to which it is proposed to transfer any part of the Corporation's undertaking, as if references to a shadow director did not include the Treasury or any Minister of the Crown: 1994 Act s 65A (added by the Companies Act 2006 (Commencement No 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007, SI 2007/2194).

NOTE 14--Definition of 'company' amended: SI 2009/1941.

NOTE 27--SI 1981/1794 replaced: Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246.

NOTE 28--See Constitutional Reform Act 2005 ss 19, 85, Sch 7 para 4, Sch 14 Pt 3 and CONSTITUTIONAL LAW AND HUMAN RIGHTS; COURTS.

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74. Contracts transferred to the Coal Authority under a restructuring scheme.

As a matter of practice, where real or personal property which was transferred to the Coal Authority¹ by a restructuring scheme² was affected by any contract to which the British Coal Corporation³ was a party, the rights and obligations of the corporation under such contracts were transferred to the Authority⁴.

1 As to the Coal Authority see PARA 52 et seq ante.

2 As to restructuring schemes see PARA 73 ante.

3 As to the British Coal Corporation see PARAS 2-3 ante.

4 The Corporation's rights and obligations under contracts for the repair of subsidence-damaged properties were also transferred to the Coal Authority. As to subsidence damage by coal mining see PARA 202 et seq ante.

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75. Successor companies.

The companies¹ which, when they were wholly owned by the Crown², became entitled or subject in accordance with any restructuring scheme³ to any property, rights or liabilities are known as 'successor companies'⁴. Provision was made in the Coal Industry Act 1994 for the financial structure of these companies and related matters⁵, and the Secretary of State⁶ was required, with the consent of the Treasury, to set target investment limits for government holding in successor companies limited by shares⁷. The target investment limit in relation to the government shareholding in each successor company was set at one-half of 1 per cent of the voting rights exercisable in all circumstances at general meetings of the company in question⁸.

The Coal Authority⁹ assumed powers and duties relating to licensing¹⁰ the successor companies before they were then sold¹¹.

1 For the meaning of 'company' see PARA 73 note 14 ante.

2 For the meaning of 'company wholly owned by the Crown' see PARA 73 note 14 ante.

3 As to restructuring schemes see PARA 73 ante.

4 Coal Industry Act 1994 s 65(1). The following successor companies took over those mines that were, on the restructuring date, in the ownership of the British Coal Corporation: Annesley Bentinck Colliery Ltd; Central and Northern Mining Ltd (renamed RJB Mining (UK) Ltd on 30 December 1994); the South Wales Regional Coal Company Ltd (renamed Celtic Energy Ltd on 3 January 1995); the Scottish Coal Company Ltd; and Tower Colliery Ltd. As to the British Coal Corporation see PARAS 2-3 ante. As to the restructuring date (ie 31 October 1994) see PARA 3 note 9 ante.

5 See *ibid* s 15, Sch 3 para 2 (initial government holding in successor companies); Sch 3 para 3 (government investment in successor companies); Sch 3 para 4 (exercise of functions through nominees); Sch 3 para 5 (payment of dividends into Consolidated Fund); Sch 3 para 6 (distributable reserves of successor companies); Sch 3 para 7 (temporary restrictions on borrowing of successor companies); Sch 3 para 8 (government lending to successor companies); Sch 3 para 9 (Treasury guarantees for loans made to successor companies); Sch 3 para 10 (limit on government financial assistance for successor companies). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711; PARLIAMENT vol 78 (2010) PARA 1028 et seq. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

6 As to the Secretary of State see PARA 4 ante.

7 See the Coal Industry Act 1994 s 16. For the meaning of 'the government shareholding' see s 16(2).

8 See the Coal Industry (Coal Mining Successor Companies Target Investment Limit) Order 1995, SI 1995/1477, art 2, Schedule. The order came into force on 23 June 1995: art 1.

9 As to the Coal Authority see PARA 52 et seq ante.

10 Ie by granting licences under the Coal Industry Act 1994 Pt II (ss 25-36) (as amended): see PARA 91 et seq post.

11 The sales took effect and the companies ceased to be wholly owned by the Crown on the following dates: Tower Colliery Ltd on 23 December 1994; RJB Mining (UK) Ltd and The Scottish Coal Company Ltd on 30 December 1994; South Wales Regional Coal Company Ltd on 31 December 1994; and Annesley Bentinck Colliery Ltd on 25 April 1995: see the Coal Industry (Coal Mining Successor Companies Target Investment Limit) Order 1995, SI 1995/1477, Schedule.

UPDATE

75 Successor companies

NOTE 5--Coal Industry Act 1994 Sch 3 para 2 amended: SI 2009/1941. Coal Industry Act 1994 Sch 3 para 6 amended: SI 2008/948.

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(ii) Financial Arrangements in connection with Restructuring

76. Grant-making powers.

The Secretary of State¹ is prohibited from including provision in any restructuring scheme² for the transfer to any person of a right to certain grants or other payments³, and from making any such grant or payment at any time after the appointed date⁴.

1 As to the Secretary of State see PARA 4 ante.

2 As to restructuring schemes see PARA 73 ante.

3 Coal Industry Act 1994 s 17(1)(a). As to the European Commission's authorisation of grants to the coal industry by the United Kingdom government see PARA 3 ante. The grants and payments referred to in the text are:

- 11 (1) payments under the Coal Industry Act 1967 s 4 (as amended) or the Coal Industry Act 1982 s 3 (as amended) (payments providing reimbursement of contributions to early retirement benefits etc) (Coal Industry Act 1994 s 17(2)(a));
- 12 (2) payments under the National Coal Board (Finance) Act 1976 s 2 (as amended) (payments towards mineworkers' pension scheme deficiency) (Coal Industry Act 1994 s 17(2)(b));
- 13 (3) grants under (a) the Coal Industry Act 1977 s 6 (repealed) (pit closure grants for certain financial years); or (b) the Coal Industry Act 1987 s 4 (prospectively repealed) (grants in respect of expenditure referable to costs incurred in those financial years or in respect of other approved expenditure) (Coal Industry Act 1994 s 17(2)(c));
- 14 (4) such payments under a scheme made in pursuance of the Coal Industry Act 1977 s 7 (as amended) (payments to redundant workers or in respect of arrangements relating to concessionary coal) as may be made otherwise than to persons to whom the scheme applies in accordance with s 7(1) (as amended) (Coal Industry Act 1994 s 17(2)(d));
- 15 (5) grants under the Coal Industry Act 1987 s 3 (as amended) (grants for workforce redeployment and reduction etc) (Coal Industry Act 1994 s 17(2)(e));
- 16 (6) grants under the Coal Industry Act 1990 s 1 (repealed) (deficiency grants to the British Coal Corporation) (Coal Industry Act 1994 s 17(2)(f)).

The Coal Industry Act 1967 s 4 (as amended); the National Coal Board (Finance) Act 1976 s 2 (as amended); the Coal Industry Act 1977 s 7 (as amended); the Coal Industry Act 1982 s 3 (as amended); the Coal Industry Act 1987 s 3 (as amended); s 4; and the Coal Industry Act 1990 s 1 are all repealed by the Coal Industry Act 1994 s 67(8), Sch 11 Pt III as from a day to be appointed under s 68. At the date at which this volume states the law no such day had been appointed.

4 Ibid s 17(1)(b). The appointed date referred to in the text is such date as the Secretary of State may by order made by statutory instrument appoint for the purposes of s 17(1)(b); but different dates might be appointed for these purposes in relation to different grants and payments: s 17(1). At the date at which this volume states the law no such order had been made.

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77. Residual payments grant.

The Secretary of State¹ has power, with the approval of the Treasury, to make payments by way of grant (known as 'residual payments grant')² to the British Coal Corporation³, or to any successor company⁴ which is for the time being wholly owned by the Crown⁵, with a view to reducing or eliminating any amount falling to be shown in any accounts of the Corporation or that company as a deficit on its cash flow for any accounting period⁶. Payment of residual payments grant is made by advancing sums during any accounting period in anticipation of what appears will be the deficit on cash flow for that period⁷.

Where payments by way of residual payments grant have been made to the Corporation or any successor company and it appears to the Secretary of State that, after those payments have been taken into account in relation to the relevant accounting period⁸, there is a surplus on its cash flow for that accounting period or for any subsequent accounting period, an amount equal to whichever is the smaller of:

- 27 (1) so much of the aggregate amount of payments made by way of grant to the Corporation or, as the case may be, that company as has not already been repaid; and
- 28 (2) the amount of the surplus,

must be paid by the Corporation or, as the case may be, that company to the Secretary of State⁹.

No amount is payable to the Secretary of State in respect of any surplus on the cash flow of any successor company for any accounting period ending after the company has ceased to be wholly owned by the Crown, but a successor company which has ceased to be so owned is required to produce accounts for the period between the end of its previous accounting period and the time when it ceased to be wholly owned by the Crown¹⁰.

1 As to the Secretary of State see PARA 4 ante.

2 Any sums required by the Secretary of State for making any such grant are to be paid out of money provided by Parliament: Coal Industry Act 1994 s 18(7). As to the European Commission's authorisation of grants to the coal industry by the United Kingdom government see PARA 3 ante.

3 As to the British Coal Corporation see PARAS 2-3 ante.

4 For the meaning of 'successor company' see PARA 75 ante.

5 For the meaning of 'company wholly owned by the Crown' see PARA 73 note 14 ante.

6 Coal Industry Act 1994 s 18(1). For these purposes, 'accounting period', in relation to the Corporation or any successor company, means any period for which the Corporation or that company is required by or under any enactment to produce accounts: s 18(8).

Residual payments grant is not payable to any person in respect of any deficit which appears to the Secretary of State to be attributable to any failure of the Corporation to be paid, or to apply for, any amount which could have been paid, or would have been payable, to the Corporation by way of any payment or grant mentioned in s 17(2) (see PARA 76 ante): s 18(3).

7 Ibid s 18(2).

8 le the accounting period in respect of which the payments were made: see ibid s 18(4).

9 Ibid s 18(4). Such sums bear interest at such rate as the Secretary of State, with the consent of the Treasury, determines: s 18(5). Any sums received by the Secretary of State by virtue of s 18(4), (5) are to be paid into the Consolidated Fund: s 18(7). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711; PARLIAMENT vol 78 (2010) PARA 1028 et seq. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

10 Ibid s 18(6). As to the dates on which the successor companies ceased to be wholly owned by the Crown see PARA 75 note 11 ante.

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78. Concessionary coal.

Under arrangements with the British Coal Corporation¹ certain persons received either concessionary coal² or payments in lieu of it. Following the restructure of the coal industry, the Secretary of State³ may, out of money provided by Parliament, make such payments⁴ to such persons as he may think fit for the purpose of securing:

- 29 (1) that supplies of concessionary coal are made on and after the restructuring date⁵ to persons who would have received such supplies from the Corporation under relevant arrangements⁶ if those arrangements had not been affected by steps taken in connection with the restructuring of the coal industry⁷;
- 30 (2) that provision is made for sums to be paid in lieu of concessionary coal to such persons⁸; and
- 31 (3) that provision is made for sums to be so paid to persons who (but for any steps so taken) would, under relevant arrangements, have received payments in lieu of concessionary coal⁹.

1 As to the British Coal Corporation see PARAS 2-3 ante.

2 'Concessionary coal' means coal or other solid fuel supplied free of charge or at reduced prices: Coal Industry Act 1994 s 19(3).

3 As to the Secretary of State see PARA 4 ante.

4 The consent of the Treasury is required for the making of payments under the Coal Industry Act 1994 s 19: s 19(2). As to the European Commission's authorisation of grants to the coal industry by the United Kingdom government see PARA 3 ante.

5 ie 31 October 1994: see PARA 3 note 9 ante.

6 'Relevant arrangements' means any arrangements which: (1) whether or not they are legally enforceable, are in operation immediately before the restructuring date; and (2) provide for the supply of concessionary coal or for the making of payments in lieu of concessionary coal: Coal Industry Act 1994 s 19(3).

7 Ibid s 19(1)(a).

8 Ibid s 19(1)(b).

9 Ibid s 19(1)(c).

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79. Extinguishment of loans to the British Coal Corporation.

Where any sum has been lent, whether before or after 5 July 1994¹, to the British Coal Corporation² out of money provided by Parliament, or any sum is for the time being to be taken as having been so lent, the Secretary of State³ may by order⁴ extinguish any present or contingent liabilities of the Corporation to make repayments of capital or payments of interest in respect of that sum⁵.

1 le the date of the passing of the Coal Industry Act 1994.

2 As to the British Coal Corporation see PARAS 2-3 ante.

3 As to the Secretary of State see PARA 4 ante.

4 The consent of the Treasury is required for the making of such an order: Coal Industry Act 1994 s 20(4). The power to make an order is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 20(5). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

5 Ibid s 20(1). The liabilities of the British Coal Corporation to make repayments of capital of £1,598,400,000 and payments of interest of £34,466,803 in respect of sums lent to it out of money provided by Parliament pursuant to the Coal Industry Act 1980 s 2 (as amended) (loans to the British Coal Corporation out of votes) were extinguished by order: see the Coal Industry Act 1994 (British Coal Corporation) Extinguishment of Loans Order 1995, SI 1995/509. The Coal Industry Act 1980 s 2 (as amended) is repealed by the Coal Industry Act 1994 s 67(8), Sch 11 Pt III as from a day to be appointed under s 68. At the date at which this volume states the law no such day had been appointed.

The Income and Corporation Taxes Act 1988 s 400(1) (restriction of tax losses in case of any write-off of government investment) has no effect in relation to any extinguishment of liabilities by an order under the Coal Industry Act 1994 s 20(1), and the Income and Corporation Taxes Act 1988 s 400(6) (as amended) applies in relation to any such extinguishment as if the reference to the body in question were a reference to the Corporation: see the Coal Industry Act 1994 s 20(2), (3). As to the write-off of government investment see INCOME TAXATION vol 23(1) (Reissue) PARA 867.

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(iii) Superannuation and Pensions

80. Provision of benefits.

The Secretary of State¹ was empowered by the Coal Industry Nationalisation Act 1946 to make regulations for the purpose of providing pensions, gratuities and other like benefits for certain persons employed in or about the coal industry². The British Coal Superannuation Scheme³ and the Mineworkers' Pension Scheme⁴ were approved under such regulations. In connection with the restructuring of the British Coal Corporation's undertaking⁵, the Coal Industry Act 1994 makes provision in relation to the pensions paid to or in respect of its present and former employees and other persons⁶. In particular, notwithstanding the prospective repeal of their original empowering provision, the existing schemes⁷ continue to have effect with certain modifications⁸. New trustees have been appointed for the scheme funds⁹.

The Secretary of State has also made regulations¹⁰ which secure the establishment of new pension schemes for employees transferred¹¹ to the private sector¹², and has also made regulations which impose restrictions and obligations for the purpose of protecting the rights in such pension schemes of persons so transferred¹³.

1 As to the Secretary of State see PARA 4 ante.

2 See the Coal Industry Nationalisation Act 1946 s 37 (as amended). See also the Coal Industry Act 1949 s 4(4) (as amended); and the Coal Industry Act 1965 s 4(1) (as amended) which modified the scope of the regulations for certain purposes. As to the eligibility for superannuation rights see the Coal Industry Nationalisation Act 1946 s 37(1A), Sch 2A (both as added and amended). As to the Secretary of State's power to amend a scheme made under the Coal Industry Nationalisation Act 1946 s 37 (as amended) so as to secure participation in any function conferred under it by any organisation which appears to him to represent a substantial proportion of its members see the Coal Industry Act 1987 s 7 (as amended); s 8. These provisions are all repealed by the Coal Industry Act 1994 s 67(8), Sch 11 Pt III as from a day to be appointed under s 68. At the date at which this volume states the law no such day had been appointed.

3 The British Coal Staff Superannuation Scheme was established on 1 January 1947 under the Coal Industry Nationalisation (Superannuation) Regulations 1946, SR & O 1946/2198.

4 The Mineworkers' Pension Scheme was established on 1 January 1952 under the Coal Industry Nationalisation (Superannuation) Regulations 1950, SI 1950/376.

5 As to the reorganisation of the coal industry under privatisation see PARAS 3, 50 et seq ante. As to the British Coal Corporation see PARAS 2-3 ante.

6 See the Coal Industry Act 1994 s 22(1), Sch 5 (as amended). For the purposes of Sch 5 (as amended), 'pension', in relation to any person, means a pension of any kind payable to or in respect of that person, including: (1) a lump sum, allowance or gratuity so payable; and (2) a return of contributions, with or without interest or any other addition: Sch 5 para 1(1).

7 'Existing scheme' means any scheme having effect by virtue of regulations made under the Coal Industry Nationalisation Act 1946 s 37 (as amended and prospectively repealed: see note 2 supra) for purposes relating to pensions, gratuities or other like benefits (ie the British Coal Superannuation Scheme and the Mineworkers' Pension Scheme): Coal Industry Act 1994 Sch 5 para 1(1).

8 See *ibid* Sch 5 para 2(1), (2); the British Coal Staff Superannuation Scheme (Modification) Regulations 1994, SI 1994/2576, regs 1, 3, 4; and the Mineworkers' Pension Scheme (Modification) Regulations 1994, SI 1994/2577, regs 1, 3, 4. As to the modification of existing schemes see PARA 82 post.

9 The British Coal Staff Superannuation Scheme Trustees Limited was appointed by the Secretary of State to be sole trustee of the British Coal Staff Superannuation Scheme: see the British Coal Staff Superannuation Scheme (Modification) Regulations 1994, SI 1994/2576, reg 4, Schedule para 1A. The Mineworkers' Pension Scheme Trustees Limited was appointed by the Secretary of State to be sole trustee of the Mineworkers' Pension Scheme: see the Mineworkers' Pension Scheme (Modification) Regulations 1994, SI 1994/2577, reg 4, Schedule para 5A.

10 As to the power to make regulations under the Coal Industry Act 1994 Sch 5 (as amended) see PARA 81 post.

11 le by virtue of the coming into force of any provisions of a restructuring scheme in accordance with which a person other than the Coal Authority becomes the employer in place of the British Coal Corporation or one of its wholly-owned subsidiaries; or by a company's having ceased at any time on or after the restructuring date (ie 31 October 1994: see PARA 3 note 9 ante) to be a subsidiary of the British Coal Corporation: *ibid* Sch 5 para 3(2). As to restructuring schemes see PARA 73 ante. As to the Coal Authority see PARA 52 et seq ante. For the meanings of 'subsidiary' and 'wholly-owned subsidiary' see PARA 50 note 6 ante.

12 See *ibid* Sch 5 paras 3, 5; the Industry-Wide Coal Staff Superannuation Scheme Regulations 1994, SI 1994/2973 (amended by SI 2001/3649); the Industry-Wide Mineworkers' Pension Scheme Regulations 1994, SI 1994/2974 (amended by SI 2001/3649); and PARA 83 post. These regulations respectively establish new schemes in which the participants in the British Coal Staff Superannuation Scheme and the Mineworkers' Pension Scheme are able to participate. Both sets of regulations came into force on 15 December 1994: Industry-Wide Coal Staff Superannuation Scheme Regulations 1994, SI 1994/2973, reg 1; Industry-Wide Mineworkers' Pension Scheme Regulations 1994, SI 1994/2974, reg 1.

13 See the Coal Industry Act 1994 Sch 5 paras 4, 5 (Sch 5 para 4 as amended); the Coal Industry (Protected Persons) Pensions Regulations 1994, SI 1994/3070; and PARA 84 post. The regulations came into force on 24 December 1994: reg 1.

UPDATE

80 Provision of benefits

NOTE 12--SI 1994/2974 further amended: SI 2004/3379.

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81. Secretary of State's power to make regulations.

The powers of the Secretary of State¹ to make regulations under the provisions of the Coal Industry Act 1994 relating to the pension provisions in connection with the restructuring of the coal industry² are exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament³. Any such power includes power to make different provision for different cases or different purposes, and to make such supplemental, incidental, consequential and transitional provision as the Secretary of State considers appropriate in relation to the provision contained in any such regulations⁴. These powers include power, for the purpose of giving effect to any option⁵, to provide for the modification⁶ of the contracts of employment of persons who become participants in a scheme established in pursuance of any such regulations⁷; and power to require any dispute arising under or in relation to any such regulations to be referred to arbitration⁸.

Regulations may have effect from a date prior to their making, but they must not place any person other than (1) the Secretary of State; (2) the Coal Authority⁹; (3) the British Coal Corporation¹⁰ or any of its wholly-owned subsidiaries¹¹; or (4) a company wholly owned by the Crown¹², in a worse position than he or it would have been in if the regulations had been made so as to have effect only from the date they were made¹³.

Where any modification of any existing scheme¹⁴ confers any powers on the Secretary of State, those powers are to be treated as conferred for purposes that include securing that the trustees and other persons concerned in the administration of the scheme exercise and perform their powers and duties in such manner as appears to the Secretary of State to take account of the desirability (a) of preventing the Secretary of State from incurring any liability under certain arrangements¹⁵; (b) of keeping to a minimum the amount of any liability incurred under such arrangements¹⁶; and (c) of managing the scheme so as to produce the largest practicable surpluses at the times as at which determinations of any relevant surpluses¹⁷ fall to be made¹⁸.

Nothing in any enactment or rule of law prevents the Corporation, the trustees of any existing scheme, or any other person concerned in the administration of any such scheme, from giving the Secretary of State or other prescribed person the advice or assistance he reasonably requires to make any determination, apportionment, allocation or transfer, or give or issue any direction or certificate¹⁹.

1 As to the Secretary of State see PARA 4 ante.

2 Ie under the Coal Industry Act 1994 s 22(1), Sch 5 (as amended): see Sch 5 para 5(1).

3 Ibid Sch 5 para 5(1).

4 Ibid Sch 5 para 5(2).

5 Ie an option afforded by virtue of ibid Sch 5 (as amended): see Sch 5 para 5(3)(a).

6 As to the meaning of 'modifications' see PARA 50 note 4 ante.

7 Coal Industry Act 1994 Sch 5 para 5(3)(a).

8 Ibid Sch 5 para 5(3)(b).

- 9 As to the Coal Authority see PARA 52 et seq ante.
- 10 As to the British Coal Corporation see PARAS 2-3 ante.
- 11 For the meanings of 'subsidiary' and 'wholly-owned subsidiary' see PARA 50 note 6 ante.
- 12 As to 'company wholly owned by the Crown' see PARA 73 note 14 ante.
- 13 Coal Industry Act 1994 Sch 5 para 5(4).
- 14 For the meaning of 'existing scheme' see PARA 80 note 7 ante.
- 15 Coal Industry Act 1994 Sch 5 para 5(5)(a). The arrangements referred to in the text are those entered into as mentioned in Sch 5 para 2(9) (see PARA 82 post): see Sch 5 para 5(5).
- 16 Ibid Sch 5 para 5(5)(b).
- 17 For the meaning of 'relevant surplus' see PARA 82 note 8 post.
- 18 Coal Industry Act 1994 Sch 5 para 5(5)(c).
- 19 Ibid Sch 5 para 5(6). The determinations etc which are referred to in the text are those for which provision is made under Sch 5: see Sch 5 para 5(6).

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82. Modification of existing schemes.

The power to modify an existing scheme¹ by regulations² has not been exercisable since the end of the period of two years beginning with the restructuring date³. Before making any regulations in relation to an existing scheme the Secretary of State⁴ had to consult with the British Coal Corporation and the trustees for the time being of that scheme⁵. The power did not authorise the making of any modification⁶ which, in relation to the person entitled to it, adversely affected so much of any pension right⁷ as gave rise to any of the principal pension obligations⁸ under that scheme⁹.

The modifications of an existing scheme that could be made by regulations included modifications for any of the following purposes:

- 32 (1) for conferring power on the Secretary of State or any other prescribed¹⁰ person to appoint trustees of the existing scheme or for requiring trustees to be appointed only in a prescribed manner and in prescribed circumstances, or with the approval of the Secretary of State or other prescribed person¹¹;
- 33 (2) for enabling a person who was entitled to appoint trustees of the existing scheme to remove trustees of the scheme from office¹²;
- 34 (3) for requiring or enabling powers or duties of any person under the existing scheme to be exercisable or performed by or in accordance with the directions of prescribed persons or in prescribed circumstances, or to be exercisable or performed only in a prescribed manner or with the consent of prescribed persons¹³;
- 35 (4) for providing that persons who became entitled in respect of any period of employment to be participants in another prescribed scheme were not, as from a determined time, entitled in respect of that period of employment to be participants in the existing scheme¹⁴;
- 36 (5) for facilitating the transfer in prescribed circumstances to another scheme of (a) rights and liabilities under the existing scheme of any participant in the existing scheme who became a participant in the other scheme¹⁵; or (b) the benefit of any arrangements under which participants in the existing scheme were relieved from any obligation to make contributions¹⁶;
- 37 (6) for the apportionment and allocation to particular rights and liabilities of assets¹⁷ of the existing scheme and for the transfer of assets to other schemes¹⁸;
- 38 (7) for restricting the persons who were to be able on and after the restructuring date to become participants in the existing scheme¹⁹;
- 39 (8) for enabling management and administration expenses of the existing scheme to be met out of the assets of the scheme²⁰;
- 40 (9) for securing that the existing scheme continued to be approved for the purposes of the relevant enactments²¹;
- 41 (10) for enabling the existing scheme to be wound up (in whole or in part) in prescribed circumstances²².

The modifications of an existing scheme that could be made by regulations included modifications making such provision as the Secretary of State considered appropriate for cases where either (i) there were assets of the scheme representing a relevant surplus; or (ii) the assets of the scheme were insufficient for meeting pension obligations under the scheme²³.

Regulations made under these provisions could provide for any relevant apportionments, allocations²⁴ or determinations²⁵ to be made at prescribed times and by reference to the opinion of prescribed persons²⁶.

The Secretary of State may still, with the consent of the Treasury, enter into such arrangements as he may consider appropriate for guaranteeing or otherwise securing, in relation to any existing scheme, that the assets of the scheme are always sufficient for meeting the principal pension obligations and such other pension obligations under the scheme to which he considers such arrangements should apply²⁷.

1 For the meaning of 'existing scheme' see PARA 80 note 7 ante.

2 Ie under the Coal Industry Act 1994 s 22(1), Sch 5 para 2. The modified British Coal Superannuation Scheme (see PARA 80 ante) is contained in the British Coal Staff Superannuation Scheme (Modification) Regulations 1994, SI 1994/2576, reg 4, Schedule (amended by SI 2001/3649). The modified Mineworkers' Pension Scheme (see PARA 80 ante) is contained in the Mineworkers' Pension Scheme (Modification) Regulations 1994, SI 1994/2577, reg 4, Schedule (amended by SI 2001/3649). Both sets of regulations came into force on 31 October 1994: British Coal Staff Superannuation Scheme (Modification) Regulations 1994, SI 1994/2576, reg 1; Mineworkers' Pension Scheme (Modification) Regulations 1994, SI 1994/2577, reg 1.

3 Coal Industry Act 1994 Sch 5 para 2(14). However, this is without prejudice to any regulations made before the end of that period or to anything done (whether before or after the end of that period) under any regulations so made: Sch 5 para 2(14). As to the restructuring date (ie 31 October 1994) see PARA 3 note 9 ante.

4 As to the Secretary of State see PARA 4 ante.

5 Coal Industry Act 1994 Sch 5 para 2(13). As to the British Coal Corporation see PARAS 2-3 ante.

6 As to the meaning of 'modifications' see PARA 50 note 4 ante.

7 'Pension rights', in relation to any person, includes all forms of right to or eligibility for the present or future payment of a pension to or in respect of that person and any right of allocation in respect of the present or future payment of a pension: Coal Industry Act 1994 Sch 5 para 1(1).

8 'Pension obligation' means any present, future or contingent obligation to make a payment which is an obligation to which pension rights of the person to whom it is owed give rise: *ibid* Sch 5 para 1(1). In Sch 5 para 2, references to the principal pension obligations under an existing scheme are references to the following:

- 17 (1) so much of any pension obligation arising under the scheme as derives neither from modifications of the scheme made on or after the restructuring date nor from any relevant surplus (Sch 5 para 2(16)(a));
- 18 (2) so much of any pension obligation arising under the scheme as represents the effect on any pension right giving rise to a pension obligation falling within head (1) *supra* of any decision before 1 September 1994 to appropriate any of a relevant surplus determined as at a time before 31 March 1994 to the payment of increases in any pensions payable in pursuance of that right (Sch 5 para 2(16)(b)); and
- 19 (3) so much of any pension obligation arising under the scheme as represents the effect on any pension right giving rise to a pension obligation falling within head (1) or head (2) *supra* of any provisions of the scheme, as modified on or after the restructuring date, which require that right to be varied from time to time by reference to fluctuations in any level of prices in Great Britain (Sch 5 para 2(16)(c)).

'Relevant surplus', in relation to an existing scheme, means any surplus determined as at any time on or after 31 March 1992 of the assets of the scheme over the amounts required, as at that time, for meeting the obligations which (apart from the surplus) either have arisen or may arise as pension obligations under the scheme: Sch 5 para 2(15). For the meaning of 'Great Britain' see PARA 1 note 1 ante. The British Coal Corporation was not entitled to apply any part of the British Coal Staff Superannuation Scheme's actuarial surplus in discharge or reduction of outstanding instalments of additional contributions required to meet the costs of providing enhanced benefits for members who were granted them on accepting voluntary redundancy before 5 April 1992: see *British Coal Corpn v British Coal Staff Superannuation Scheme Trustees Ltd* [1995] 1 All ER 912.

9 Coal Industry Act 1994 Sch 5 para 2(12).

- 10 'Prescribed' means prescribed by regulations made by the Secretary of State: *ibid* Sch 5 para 1(1).
- 11 *Ibid* Sch 5 para 2(3)(a). As to the new trustees appointed see PARA 80 note 9 ante.
- 12 *Ibid* Sch 5 para 2(3)(b).
- 13 *Ibid* Sch 5 para 2(3)(c).
- 14 *Ibid* Sch 5 para 2(3)(d).
- 15 *Ibid* Sch 5 para 2(3)(e)(i).
- 16 *Ibid* Sch 5 para 2(3)(e)(ii).
- 17 'Assets', in relation to any existing scheme, means all the assets for the time being held for the purposes of the scheme by the trustees of the scheme, including every interest in property and right to which the trustees of the scheme are for the time being entitled, together with any liabilities, not being liabilities in respect of pension obligations, to which any entitlement of the trustees to any of the scheme's assets is subject: *ibid* Sch 5 para 1(1).
- 18 *Ibid* Sch 5 para 2(3)(f). The provisions referred to are those of Sch 5 (as amended): see Sch 5 para 2(3)(f).
- 19 *Ibid* Sch 5 para 2(3)(g).
- 20 *Ibid* Sch 5 para 2(3)(h).
- 21 *Ibid* Sch 5 para 2(3)(i). 'The relevant enactments' means the Income and Corporation Taxes Act 1988 Pt XIV Ch I (ss 590-612) (as amended) (retirement benefit schemes) and the Pension Schemes Act 1993 Pt III (ss 7-68) (as amended) (so far as relating to occupational pension schemes within the meaning of that Act): Coal Industry Act 1994 Sch 5 para 1(1). Note that references in Sch 5 (as amended) to a scheme being approved for the purposes of the Pension Schemes Act 1993 Pt III (as amended) are references to its being included in a contracting-out certificate having effect for the purposes of that Part: Coal Industry Act 1994 Sch 5 para 1(2). As to retirement benefit schemes and occupational pension schemes see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 741 et seq.
- 22 *Ibid* Sch 5 para 2(3)(j).
- 23 *Ibid* Sch 5 para 2(4). These modifications might contain:
- 20 (1) provision for a relevant surplus, and the assets representing it, to be apportioned between (a) the part (if any) of the surplus which was to be retained in a reserve ('an investment reserve') as an asset of the scheme, and (b) the remainder ('the distributable part') of the surplus (Sch 5 para 2(5)(a));
 - 21 (2) provision for the management of assets representing an investment reserve and for the manner in which any such assets were to be applied (Sch 5 para 2(5)(b));
 - 22 (3) provision for income accruing in respect of assets representing an investment reserve to be added to the reserve (Sch 5 para 2(5)(c));
 - 23 (4) provision for the manner in which assets representing the distributable part of a relevant surplus were to be applied (Sch 5 para 2(5)(d)); and
 - 24 (5) provision, for the purposes of any provision under heads (1)-(4) *supra*, for modifying any decisions as to the way in which relevant surpluses determined as at times before the restructuring date, and the assets representing any such surpluses, were to be treated (Sch 5 para 2(5)(e)).

The provision as to the apportionment of any surplus or assets to an investment reserve that might be contained in such modifications was not to include any provision authorising the allocation to such a reserve of any part of a surplus determined as at a time after 31 March 1994, or of any assets representing any part of such a surplus, except where the allocation was made for making good amounts which (apart from any entitlement for which provision is made by virtue of Sch 5 para 2(7)) would have been comprised in the value of the reserve if assets representing any part of it had not been applied from the reserve in meeting a deficiency that arose as at any time by reason of the other assets of the scheme having been insufficient as at that time for meeting pension obligations under the scheme: Sch 5 para 2(6). The provision as to the application of assets representing an investment reserve that might be contained in such modifications included provision for the Secretary of State to become entitled where (i) any such arrangements as are mentioned in Sch 5 para 2(9) (see the text to note 27 *infra*) were entered into in relation to pension obligations under the scheme in question;

and (ii) the value of the assets representing the reserve exceeded the aggregate amount required for the purposes for which the reserve had been retained, to assets of the scheme representing the amount of the excess or, where those purposes ceased, the value of the reserve: Sch 5 para 2(7). The provision as to the application of assets representing the distributable part of a relevant surplus that might be contained in such modifications included provision for the Secretary of State to become entitled where (A) the surplus was one determined as at a time on or after 31 March 1994; and (B) any such arrangements as are mentioned in Sch 5 para 2(9) were entered into in relation to pension obligations under the scheme in question, to assets of the scheme representing no more than one-half of the distributable part of that surplus: Sch 5 para 2(8).

As to payments towards deficiencies of the mineworkers' pension scheme as a result of expenditure incurred in any of the financial years 1975-76 to 1994-95 see the National Coal Board (Finance) Act 1976 s 2 (amended by the Coal Industry Act 1973 s 5; the Coal Industry Act 1987 ss 1(2), 10(3), Sch 1 para 30(1), Sch 3 Pt I). The National Coal Board (Finance) Act 1976 ss 2, 4 (both as amended) are repealed by the Coal Industry Act 1994 s 67(8), Sch 11 Pt III as from a day to be appointed under s 68. At the date at which this volume states the law no such day had been appointed. At the date at which this volume states the law no such day had been appointed.

24 Ie as mentioned in *ibid* Sch 5 para 2(1)-(10): see Sch 5 para 2(11).

25 Ie any determination for the purposes of any existing scheme of the amount of, or of any part of, any surplus or excess or of the assets for the time being to be treated as representing the whole or any part of any such surplus or excess; and the determination of any other matter falling to be determined for the purposes of any provision relating, in the case of any such scheme, to the management or application of the assets representing any reserve or surplus: see *ibid* Sch 5 para 2(11).

26 *Ibid* Sch 5 para 2(11).

27 *Ibid* Sch 5 para 2(9). Sums required by the Secretary of State for making any payment in pursuance of any such arrangements are to be paid out of money provided by Parliament; and any sums received by him by virtue of Sch 5 para 2(7) or Sch 5 para 2(8) (see note 23 *supra*) are to be paid into the Consolidated Fund: Sch 5 para 2(10). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

UPDATE

82 Modification of existing schemes

NOTE 2--SI 1994/2577 Schedule further amended: SI 2004/3379.

NOTE 21--Certain provisions of the 1988 Act Pt XIV Ch 1 (as amended) are replaced by provisions of the Income Tax (Earnings and Pensions) Act 2003. For destination of replaced provisions, see table, INCOME TAXATION vol 23(2) (Reissue) PARA 1900A.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/3. REORGANISATION OF THE COAL INDUSTRY/(3) RESTRUCTURING OF THE BRITISH COAL CORPORATION'S UNDERTAKING/(iii) Superannuation and Pensions/83. Replacement schemes for employees transferred to the private sector.

83. Replacement schemes for employees transferred to the private sector.

The Secretary of State¹ may by regulations² make such provision as he thinks fit for securing that arrangements are made and implemented in relation to any existing scheme³ for enabling participants in it to become participants in another pension scheme ('a new scheme') which is established, under and in accordance with the regulations, by the British Coal Corporation⁴ or such other person as may be prescribed; and satisfies the statutory requirements by reference to that existing scheme⁵. This paragraph sets out the provisions that may be made in such regulations.

Where the employment of any participant in any existing scheme in relation to which a new scheme has been established⁶ is affected (1) by the coming into force of any provisions of a restructuring scheme⁷ in accordance with which a person other than the Coal Authority⁸ becomes his employer in place of the Corporation or one of its wholly-owned subsidiaries⁹; or (2) by a company's¹⁰ having ceased at any time on or after the restructuring date¹¹ to be a subsidiary of the Corporation¹², a duty arises to secure that the person to whom the duty is owed is afforded, and is entitled to exercise, an option of becoming a participant in the new scheme in respect of the employment to which he is transferred or, as the case may be, in respect of his continuation, after the time when the duty arises, in the employment in respect of which he is at that time participating in the existing scheme¹³. This duty is owed to the participant and to every person who at that time is a participant in that existing scheme in respect of his continuing employment with a person other than the Corporation or a subsidiary of the Corporation¹⁴. In a case where it is owed to a person who is transferred in accordance with a restructuring scheme from the employment of one person to the employment of another, the duty is owed by the person to whose employment he is transferred¹⁵. In any other case, it is owed by the person who, in relation to the employment to which the duty relates, is the employer of the person to whom the duty is owed¹⁶.

A new scheme satisfies the statutory requirements by reference to an existing scheme ('the previous scheme') if it contains such provision¹⁷ as may be prescribed for the following purposes¹⁸:

- 42 (a) that no person is able to participate in the new scheme as an employee unless he is a person falling within a certain provision¹⁹;
- 43 (b) that the new scheme is and continues to be approved for the purposes of the relevant enactments²⁰;
- 44 (c) that the new scheme provides benefits to and in respect of participants in the new scheme which are no less advantageous than the benefits falling to be provided under the previous scheme as at the time immediately before the restructuring date²¹; and
- 45 (d) that the pension rights under the previous scheme of any person who becomes a participant in the new scheme in respect of any employment are capable, at that person's option, of being transferred so as to become rights under the new scheme²².

1 As to the Secretary of State see PARA 4 ante.

2 See the Industry-Wide Coal Staff Superannuation Scheme Regulations 1994, SI 1994/2973 (amended by SI 2001/3649) (which establish new schemes in which the participants in the British Coal Staff Superannuation Scheme are able to participate); and the Industry-Wide Mineworkers' Pension Scheme Regulations 1994, SI 1994/2974 (amended by SI 2001/3649) (which establish new schemes in which the participants in the Mineworkers' Pension Scheme are able to participate). Both sets of regulations came into force on 15 December 1994: Industry-Wide Coal Staff Superannuation Scheme Regulations 1994, SI 1994/2973, reg 1; Industry-Wide Mineworkers' Pension Scheme Regulations 1994, SI 1994/2974, reg 1. As to the British Coal Staff Superannuation Scheme and the Mineworkers' Pension Scheme see PARA 80 ante.

3 For the meaning of 'existing scheme' see PARA 80 note 7 ante.

4 As to the British Coal Corporation see PARAS 2-3 ante.

5 Coal Industry Act 1994 s 22(1), Sch 5 para 3(1); and see the text to notes 17-22 infra.

6 Ie in pursuance of regulations under *ibid* Sch 5 (as amended): Sch 5 para 3(2).

7 As to restructuring schemes see PARA 73 ante.

8 As to the Coal Authority see PARA 52 et seq ante.

9 For the meanings of 'subsidiary' and 'wholly-owned subsidiary' see PARA 50 note 6 ante.

10 For the meaning of 'company' see PARA 73 note 14 ante.

11 Ie 31 October 1994: see PARA 3 note 9 ante.

12 For these purposes, where a company has ceased to be a subsidiary of the Corporation, the persons whose employment is to be treated as affected by the company's having ceased to be such a subsidiary are only the persons employed by that company at whichever is the later of the following times: (1) the time when the company ceased to be a subsidiary of the Corporation; and (2) the time when the company would so cease if any shares in the company which have at any time been transferred (whether in accordance with a restructuring scheme or otherwise) to any of the following persons: (a) the Treasury; (b) the Secretary of State; (c) a company wholly owned by the Crown; or (d) any nominee of the Treasury, the Secretary of State or a company wholly owned by the Crown, remained vested in the Corporation for so long after their transfer as they remain vested in any of the persons mentioned in heads (a)-(d) supra: Coal Industry Act 1994 Sch 5 para 3(5). A person whose employment is affected by a company's having ceased to be a subsidiary of the Corporation is to be treated for these purposes as so affected only at whichever of the times mentioned in heads (1) and (2) supra is applicable in his case: Sch 5 para 3(5). For the meaning of 'company wholly-owned by the Crown' see PARA 73 note 14 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

13 See *ibid* Sch 5 para 3(2), (3).

14 *Ibid* Sch 5 para 3(2).

15 *Ibid* Sch 5 para 3(4)(a).

16 *Ibid* Sch 5 para 3(4)(b).

17 Regulations prescribing the provision that must be contained in a scheme for it to satisfy the statutory requirements may provide for that provision to be determined by reference to such directions and certificates of the Secretary of State as may be given or issued to such persons, in such cases and in such manner as may be prescribed: *ibid* Sch 5 para 3(9).

18 *Ibid* Sch 5 para 3(6).

19 *Ibid* Sch 5 para 3(7)(a). The provision referred to in the text is Sch 5 para 3(8), and a person falls within that provision if he is:

25 (1) one of the persons who, by virtue of Sch 5 para 3(2), is to be afforded the option of becoming a participant in the new scheme (Sch 5 para 3(8)(a));

26 (2) a person the duties of whose employment with the same employer have changed so that he has ceased to be eligible to participate in a scheme in relation to which he has been entitled to protection under Sch 5 para 4 (see PARA 84 post) but has become a person who satisfies, by reference to his new duties, a condition of eligibility for participation in the new scheme (Sch 5 para 3(8)(b)); or

- 27 (3) a person with pension rights as a result of having been a participant in an existing scheme who, at any time on or after the restructuring date, enters the employment of a person any of whose employees are already, in respect of their employment with that person, participants in the new scheme (Sch 5 para 3(8)(c)).

As to the meaning of 'pension rights' see PARA 82 note 7 ante.

20 Ibid Sch 5 para 3(7)(b). For the meaning of 'relevant enactments' see PARA 82 note 21 ante.

21 Ibid Sch 5 para 3(7)(c).

22 Ibid Sch 5 para 3(7)(d).

UPDATE

83 Replacement schemes for employees transferred to the private sector

NOTE 2--SI 1994/2974 further amended: SI 2004/3379.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/3. REORGANISATION OF THE COAL INDUSTRY/(3) RESTRUCTURING OF THE BRITISH COAL CORPORATION'S UNDERTAKING/(iii) Superannuation and Pensions/84. Protection for rights under private sector schemes.

84. Protection for rights under private sector schemes.

The Secretary of State¹ may, in relation to any replacement pension scheme for employees transferred to the private sector², and any prescribed scheme the establishment of which appears to the Secretary of State to be, or to have been required, for the purposes of any protection to which any person is entitled³, impose by regulations⁴ such restrictions and obligations as appear to him to be appropriate for the purpose of securing:

- 46 (1) that no person entitled to protection in relation to such a scheme is placed in any worse position⁵ by reason of (a) any such amendment of the scheme as is made otherwise than in prescribed⁶ circumstances and results in benefits under the scheme being reduced, or contributions by employees being increased; or (b) any winding-up, in whole or in part, of the scheme⁷;
- 47 (2) that no person entitled to protection in relation to such a scheme is prevented from continuing to participate in or acquire pension rights under the scheme by reason of any change of employer which does not affect his continuity of employment⁸; and
- 48 (3) that no person entitled to protection in relation to such a scheme is prevented⁹ from continuing to participate in or acquire pension rights under the scheme by reason of his having entered the employment of an employer who (a) opts to allow that person to continue, in respect of his employment with that employer, as a participant in that scheme; and (b) is able to exercise that option without the scheme ceasing to be approved for the purposes of the relevant enactments¹⁰.

Such regulations may make provision for securing that a person entitled to protection in relation to such a scheme who ceases, by reason of any change in the duties of his employment with the same employer, to be eligible to participate in that scheme, but who, by reason of the change, becomes a person who satisfies, by reference to his new duties, a condition of eligibility for participation in another such scheme, is afforded the equivalent protection with respect to his participation in the other scheme as was previously secured¹¹ with respect to his continuing participation in the scheme for which he has ceased to be eligible¹². Regulations may also make provision for securing that individuals with pension rights under such a scheme are allowed to become participants in another such scheme or to renew their participation in the same scheme where, in prescribed cases, they enter the employment of a person any of whose employees are already, in respect of their employment with that person, participants in the other scheme or, as the case may be, in the scheme under which those rights subsist¹³.

Regulations may impose duties¹⁴ on (i) any person who has been or is for the time being the employer of a person entitled to protection in relation to any such scheme; and (ii) any persons by whom such an employer is or has been wholly owned¹⁵. They may also provide for the duties imposed by the regulations on any person to be owed to prescribed persons, including persons other than those who are or have been employed by that person or, as the case may be, by a company wholly owned by him¹⁶.

Certain persons are entitled to protection in relation to any such scheme, except in so far as they cease to be so entitled¹⁷. A person entitled to such protection may elect, in the prescribed manner, that he is to cease to be entitled to that protection¹⁸. If any person who is entitled to protection by virtue of having exercised an option to become a participant in the scheme in respect of his employment, or having been a participant in the scheme in pursuance of regulations for the purpose of preserving the entitlement of that person to protection in relation to any other such scheme¹⁹, ceases to be in continuous employment or voluntarily withdraws from that scheme, and the circumstances of that cesser or withdrawal are not such as may be prescribed, that person ceases to be entitled to that protection except as respects pension rights which have accrued to him before the time when he so ceases or withdraws²⁰. Regulations may provide that no account is to be taken of any person's ceasing to be in continuous employment for such periods and in such circumstances as may be prescribed²¹.

1 As to the Secretary of State see PARA 4 ante.

2 Ie a scheme established in pursuance of regulations under the Coal Industry Act 1994 s 22(1), Sch 5 para 3(1) (see PARA 83 ante): see Sch 5 para 4(1)(a).

3 Ibid Sch 5 para 4(1)(b).

4 See the Coal Industry (Protected Persons) Pensions Regulations 1994, SI 1994/3070, which are concerned with the industry-wide pension scheme established in accordance with the Industry-Wide Coal Staff Superannuation Scheme Regulations 1994, SI 1994/2973 (amended by SI 2001/3649); and the industry-wide pension scheme established in accordance with the Industry-Wide Mineworkers' Pension Scheme Regulations 1994, SI 1994/2974 (amended by SI 2001/3649).

5 The reference to being placed in any worse position is to be construed, in relation to a person entitled to protection by virtue of the Coal Industry Act 1994 Sch 5 para 4(6)(a) (see head (1) in note 17 infra) who ceases, after the exercise of the option made available to him in pursuance of Sch 5 para 3(2) to participate in or acquire pension rights under any scheme, as a reference to being placed in a position which is worse than his position immediately before he so ceases: Sch 5 para 4(10). As to the meaning of 'pension rights' see PARA 82 note 7 ante.

6 For the meaning of 'prescribed' see PARA 82 note 10 ante.

7 Coal Industry Act 1994 Sch 5 para 4(2)(a).

8 Ibid Sch 5 para 4(2)(b).

9 Ie in a case not falling within head (2) in the text: see ibid Sch 5 para 4(2)(c).

10 Ibid Sch 5 para 4(2)(c). For the meaning of 'relevant enactments' see PARA 82 note 21 ante.

11 Ie by virtue of ibid Sch 5 para 4: see Sch 5 para 4(3).

12 Ibid Sch 5 para 4(3).

13 Ibid Sch 5 para 4(4).

14 These duties may be either as to the provision or amendment of any such scheme, the purchase of annuities, the making of payments or otherwise: see ibid Sch 5 para 4(5)(a).

15 Ibid Sch 5 para 4(5)(a). For these purposes a company is wholly owned by any person if its members do not include any person other than (1) that person himself; (2) companies wholly owned by that person; and (3) persons acting on behalf of that person or a company wholly owned by that person: Sch 5 para 4(13).

16 Ibid Sch 5 para 4(5)(b).

17 See ibid Sch 5 para 4(6). The persons entitled to protection are: (1) every person who (a) has exercised an option conferred by virtue of Sch 5 para 3(2) (see PARA 83 ante) to become a participant in the scheme in respect of his employment; or (b) is or has been a participant in the scheme in pursuance of any regulations made under Sch 5 para 4 (as amended) for the purpose of preserving the entitlement of that person to protection in relation to any other scheme to which Sch 5 para 4 (as amended) applies (Sch 5 para 4(6)(a)); and (2) every person who has pension rights under the scheme in consequence of the death of a person falling

within head (1) supra (Sch 5 para 4(6)(b)). However, a person is not entitled to protection by virtue of head (2) supra except as respects the pension rights in respect of which he falls within that head: Sch 5 para 4(6). As to how a person ceases to be entitled to protection see Sch 5 para 4(7)-(9); and the text to notes 18-20 infra.

18 Ibid Sch 5 para 4(7).

19 Ie under ibid Sch 5 para 4(6)(a) (see note 17 head (1) supra).

20 Ibid Sch 5 para 4(8). However, if such a person continues to be a participant in that scheme after such a change of employment as brings the case within Sch 5 para 4(2)(c) (see the text to note 10 supra), that person ceases to be entitled to that protection except as respects pension rights which have accrued to him before that change: Sch 5 para 4(9).

21 Ibid Sch 5 para 4(12). The Employment Rights Act 1996 Pt XIV Ch I (ss 210-219) (as amended), except s 218(6), applies for the purposes of the Coal Industry Act 1994 Sch 5 para 4 (as amended) as if Sch 5 para 4 (as amended) were contained in the Employment Rights Act 1996: Coal Industry Act 1994 Sch 5 para 4(11) (amended by the Employment Rights Act 1996 s 240, Sch 1 para 64).

UPDATE

84 Protection for rights under private sector schemes

NOTE 4--SI 1994/2974 further amended: SI 2004/3379.

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85. Reimbursement of contributions to early retirement benefits.

The Secretary of State¹ was empowered to make payments, out of money provided by Parliament, to the British Coal Corporation² reimbursing it the amount³ of any contributions⁴ in respect of any increase in the cost of retirement benefits paid before normal retiring age to or in respect of persons who were at any time eligible to receive payments under specified schemes⁵ for payments to redundant workers⁶. However, as part of the restructuring of the coal industry, this provision is repealed by the Coal Industry Act 1994 as from a day to be appointed⁷.

1 As to the Secretary of State see PARA 4 ante.

2 As to the British Coal Corporation see PARAS 2-3 ante.

3 The amount of any such payments was to be determined in such manner as might be agreed between the Secretary of State and the Corporation with the approval of the Treasury and had to be certified by the Corporation's auditors: see the Coal Industry Act 1967 s 4(2) (amended by the Minister for the Civil Service Order 1968, SI 1968/1656, arts 2(1)(d), 3(2); the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670; and the Coal Industry Act 1987 s 1(1), (2), Sch 1 para 16). The Coal Industry Act 1967 s 4 (as amended) is repealed by the Coal Industry Act 1994 s 67(8), Sch 11 Pt III as from a day to be appointed under s 68. At the date at which this volume states the law no such day had been appointed. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

4 I.e. payments by way of contributions to superannuation funds maintained by virtue of the Coal Industry Nationalisation Act 1946 s 37 (as amended; prospectively repealed) (see PARA 80 note 2 ante); see the Coal Industry Act 1967 s 4(3) (prospectively repealed: see note 3 supra).

5 I.e. schemes under ibid s 3 (repealed) (payments to redundant workers in the coal industry) or the Coal Industry Act 1977 s 7 (as amended; prospectively repealed) (see PARA 86 post) (payments to redundant workers).

6 See the Coal Industry Act 1967 s 4(1) (amended by the Coal Industry Act 1977 s 15, Sch 4 para 2; and the Coal Industry Act 1987 s 1(1), (2), Sch 1 para 16; prospectively repealed) (see note 3 supra)).

7 See note 3 supra.

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86. Benefits for redundant coal industry employees.

For the purpose of providing assistance to persons made redundant¹ by the closure of coal mines² or coking plants, the reduction in the number of persons employed at them or the consequent reduction in ancillary services and facilities, the Secretary of State³ may, by order⁴ make a scheme providing for payments, out of money provided by Parliament⁵, to or in respect of prescribed⁶ classes of persons who at any time between 17 July 1967 and 29 March 1987 (1) were employed at a coal mine or at any place of a prescribed class used for providing services or facilities ancillary to the working of one or more coal mines or were employed by any person carrying on in Great Britain⁷ a business consisting wholly or mainly of the production of coke and were so employed either at a coking plant or at any place of a prescribed class used for providing services or facilities ancillary to the operation of one or more coking plants; and in either case (2) became redundant in prescribed circumstances⁸.

Payments under a scheme are either payments by the Secretary of State to persons to whom the scheme applies or payments by the Secretary of State to the British Coal Corporation⁹ in respect of the carrying out by the Corporation of arrangements relating to concessionary coal¹⁰; and the aggregate amounts of such payments are subject to specified limits¹¹. However, as part of the restructuring of the coal industry, these provisions are repealed by the Coal Industry Act 1994 as from a day to be appointed¹².

1 As to redundancy generally see EMPLOYMENT vol 40 (2009) PARA 790 et seq.

2 For the meaning of 'mine' see PARA 5 ante.

3 As to the Secretary of State see PARA 4 ante.

4 The power to make a scheme is exercisable by order contained in a statutory instrument, which may be varied or revoked by a subsequent order: Coal Industry Act 1977 s 7(7). An order may not be made unless a draft of it has been laid before and approved by the House of Commons: s 7(7). Section 7 (as amended) is repealed by the Coal Industry Act 1994 s 67(8), Sch 11 Pt III as from a day to be appointed under s 68. At the date at which this volume states the law no such day had been appointed.

5 Coal Industry Act 1977 s 7(9) (prospectively repealed: see note 4 supra).

6 I.e. prescribed by a scheme under *ibid* s 7 (as amended; prospectively repealed): s 7(8) (prospectively repealed: see note 4 supra).

7 For the meaning of 'Great Britain' see PARA 1 note 1 ante.

8 Coal Industry Act 1977 s 7(1) (amended by Coal Industry Act 1980 s 7(1); and the Coal Industry Act 1985 s 3(1); prospectively repealed (see note 4 supra)).

The Redundant Mineworkers (Payments Scheme) Order 1968, SI 1968/987 (as amended); the Redundant Mineworkers (Payments Scheme) Order 1972, SI 1972/335 (as amended); and the Redundant Mineworkers and Concessionary Coal (Payments Schemes) Order 1973, SI 1973/1268 (as amended) were all continued in force by the Coal Industry Act 1977 s 7(10) (prospectively repealed: see note 4 supra) but will lapse on the repeal of that section. The following orders have been made under s 7 (as amended; prospectively repealed): the Redundant Mineworkers and Concessionary Coal (Payments Schemes) Order 1978, SI 1978/415 (as amended); and the Redundant Mineworkers (Payments Schemes) (Amendment and Consolidation) Order 1996, SI 1996/1288, but will lapse on the repeal of that section. The Redundant Mineworkers (Payments Schemes) (Amendment and Consolidation) Order 1996, SI 1996/1288, establishes a scheme which revokes and supersedes earlier schemes made under the Redundant Mineworkers and Concessionary Coal (Payments Schemes) Order 1983, SI 1983/506 (revoked) (the '1983 Scheme' for employees made redundant between 6 April 1983 and 1 April 1984); the

Redundant Mineworkers and Concessionary Coal (Payments Schemes) Order 1984, SI 1984/457 (revoked) (the '1984 Scheme' for employees made redundant between 1 April 1984 and 30 March 1986); and the Redundant Mineworkers and Concessionary Coal (Payments Schemes) Order 1986, SI 1986/625 (revoked) (the '1986 Scheme' for employees made redundant between 30 March 1986 and 29 March 1987); see the Redundant Mineworkers (Payments Schemes) (Amendment and Consolidation) Order 1996, SI 1996/1288, arts 1-4. The termination dates of the earlier schemes remain the same for those entitled under them and are as follows: (1) 3 April 1999 for the 1983 Scheme; (2) 31 March 2001 for the 1984 Scheme; and (3) 30 March 2002 for the 1986 Scheme, provided in each case that the employee does not first reach the age of 65 (if a man) or 60 (if a woman): see art 5, Schedule para 9.

9 As to the British Coal Corporation see PARAS 2-3 ante.

10 Coal Industry Act 1977 s 7(2) (amended by the Coal Industry Act 1987 s 1(2), Sch 1 para 34(1); prospectively repealed (see note 4 supra)). As to concessionary coal see PARA 78 ante.

11 See the Coal Industry Act 1977 s 7(4), (5) (as amended and prospectively repealed: see note 4 supra). 'Concessionary coal' means coal or other solid fuel supplied free of charge or at reduced prices: s 7(8) (prospectively repealed: see note 4 supra).

12 See note 4 supra.

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(iv) Social Welfare

87. Transfer of functions of the Coal Industry Social Welfare Organisation.

The miners' welfare fund was set up in 1920 for the improvement of social conditions of colliery workers¹. When it was wound up on 1 July 1952, its property, rights and liabilities were divided between the British Coal Corporation² and the Coal Industry Social Welfare Organisation³ in accordance with a scheme agreed between them⁴. Similarly, the property, rights and liabilities of the Miners' Welfare Commission, which had been set up in 1939⁵, were transferred to the British Coal Corporation and the Coal Industry Social Welfare Organisation on the dissolution of the Commission on 1 July 1952⁶.

On 23 March 1995 the functions of the Coal Industry Social Welfare Organisation were transferred to the trustees of the trust known as 'The Coal Industry Social Welfare Organisation'⁷. The Secretary of State has power by order to vary certain trusts⁸ if it appears to him expedient in the interest of social welfare activities⁹.

1 Ie under the Mining Industry Act 1920 s 20 (repealed).

2 As to the British Coal Corporation see PARAS 2-3 ante.

3 The Coal Industry Social Welfare Organisation was incorporated in 1952 as a company limited by guarantee registered under the Companies Acts. Following restructuring, the company was wound up: see further the text and note 7 infra.

4 See the Miners' Welfare Act 1952 s 2. The transfer included colliery welfare property (see ss 3-6), vocational education trusts (see s 7) and certain documents (see s 9). 'Colliery welfare property' means property representing an application of moneys standing to the credit of the miners' welfare fund, being property used for purposes conducive to the welfare of persons employed in or about coal mines in matters affecting their employment, and in particular includes property used for the following purposes: (1) the maintenance and operation in or about coal mines of pithead baths, drying rooms or canteens or of ancillary services; (2) the maintenance and operation of cycle stores, bus shelters or other similar facilities; (3) the maintenance and operation of medical treatment centres or other facilities for medical or therapeutic treatment; (4) the advancement of vocational education or training for the coal-mining industry (ss 3(1), 16(1), Sch 1 paras 1-3); but does not include property for the following purposes: (a) the maintenance and operation of recreation grounds, institutes, clubs or camps, and the encouragement or organisation of sports, games, holidays or other social or cultural activities; (b) the maintenance and operation of convalescent homes or ambulances, or the assistance of the sick and disabled otherwise than by the provision of such facilities as are mentioned in head (3) supra; (c) the advancement of education or training, other than vocational training or training for the coal-mining industry (ss 3(1), 16(1), Sch 1 paras 5-7). As to the payment of grants by the British Coal Corporation to enable the social welfare organisation to meet the estimated cost of any social welfare activities see s 13 (amended by the Coal Industry Act 1987 s 1(1), (2), Sch 1 para 3(a)). 'Social welfare activities' means activities concerned with the maintenance or improvement of the health, social well-being, recreation or conditions of living of (i) persons employed in or about coal mines or otherwise employed under the Corporation; (ii) persons who have ceased to be so employed by reason of age or disability or, having ceased to be so employed for any reason, have not subsequently changed their occupation; or (iii) dependants of such persons, and in particular includes activities carried on for the purposes mentioned in heads (a)-(c) supra: Miners' Welfare Act 1952 ss 3(1), 16(1), Sch 1 paras 5-7. Provision was also made regarding grants by the Corporation: see s 13.

As part of the restructuring of the coal industry, the Miners' Welfare Act 1952 is repealed by the Coal Industry Act 1994 ss 22(2), 67(8), Sch 11 Pt III as from a day to be appointed by s 68.

5 Ie under the Mining Industry (Welfare Fund) Act 1939 s 2 (repealed).

6 See the Miners' Welfare Act 1952 ss 1(2), 8, 10 (all prospectively repealed: see note 4 supra).

7 Ibid ss 12(3), 15 (both prospectively repealed: see note 4 supra); Miners' Welfare Act 1952 (Transfer of Functions of Coal Industry Social Welfare Organisation) Order 1995, SI 1995/855, arts 1, 2. The trust is registered with the Charity Commissioners under the Charities Act 1993 with the number 1015581: Miners' Welfare Act 1952 (Transfer of Functions of Coal Industry Social Welfare Organisation) Order 1995, SI 1995/855, art 2. As to the registration of charities see CHARITIES vol 8 (2010) PARA 304 et seq.

Despite the prospective repeal of the Miners' Welfare Act 1952, s 12(3) has effect pending its repeal as if the functions so transferred are all the functions of the Coal Industry Social Welfare Organisation, whether or not they arose under the Miners' Welfare Act 1952: Coal Industry Act 1994 s 22(3). In particular the repeal of the Miners' Welfare Act 1952 does not affect the application in relation to any trusts of the Recreational Charities Act 1958 s 2 (certain trusts for the purposes of welfare activities within the meaning of the Miners' Welfare Act 1952 to be charitable: see CHARITIES vol 8 (2010) PARA 51): Coal Industry Act 1994 s 67(7), Sch 10 para 8.

8 Ie any trust that subsisted before 1 July 1952 and is in force in respect of property consisting (1) of property representing an application of moneys standing to the credit of the miners' welfare fund; or (2) of such property mentioned in head (1) supra and other property held with it where the value of the property mentioned in head (1) supra substantially exceeds the value of the other property: see the Coal Industry Nationalisation Act 1946 s 41(1) (substituted by the Miners' Welfare Act 1952 s 11(1)). The Coal Industry Nationalisation Act 1946 s 41 (as amended) is repealed by the Coal Industry Act 1994 s 67(8), Sch 11 Pt III as from a day to be appointed under s 68. At the date at which this volume states the law no such day had been appointed. The repeal of the Coal Industry Nationalisation Act 1946 s 41 (as amended) is without prejudice to the continuing effect of any order made before that repeal under that section: Coal Industry Act 1994 Sch 10 para 7.

9 See the Coal Industry Nationalisation Act 1946 s 41(1) (as substituted and prospectively repealed: see note 8 supra); and the Miners' Welfare Act 1952 s 11(2) (prospectively repealed: see note 4 supra). Certain conditions must be met before such an order may be made: see the Coal Industry Nationalisation Act 1946 s 41(2) (as substituted and prospectively repealed: see note 8 supra). Trusts so varied may be varied by a subsequent order: s 41(3) (prospectively repealed: see note 8 supra).

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88. Participation of employee organisations in trusts and social welfare bodies.

Where it appears to the Charity Commissioners¹ on an application by an employee organisation² that the members of the employee organisation or the members and their dependants constitute a substantial proportion of those who may benefit under a trust³, and that neither the organisation nor its members are entitled to appoint any of the trustees of the trust⁴, the Charity Commissioners may by order make a scheme amending the trust for the purpose of securing fair representation amongst the trustees of those persons employed in the coal industry who may benefit under the trust⁵. Such an amendment scheme may (1) make such provision as to the manner in which the trustees are to be appointed as the Charity Commissioners consider appropriate⁶; (2) restrict or remove any person's right to appoint a trustee⁷; (3) remove any trustee⁸; and (4) make such further amendments of the provisions regulating the trust as the Charity Commissioners consider appropriate⁹. The Charity Commissioners must not exercise their powers under this provision in any case which they consider, by reason of any special question of law or of fact which it may involve, more fit to be adjudicated on by the court¹⁰.

Similarly, if it appears to the Secretary of State¹¹ after receiving representations from the British Coal Corporation that there is any organisation representing a substantial proportion of employees or of any class of them which does not enjoy full participation¹² in any relevant social welfare body¹³, he may by order¹⁴ make such amendments of the constitution of the body as he considers appropriate (a) to entitle the organisation to be a member of the body; (b) to confer on it the right to vote on decisions affecting its affairs; and (c) to confer on it the right to participate in the management of the body in any other way¹⁵. Before making such an order the Secretary of State must consult the British Coal Corporation and any organisation which appears to him to represent a substantial proportion of its employees or of any class of them¹⁶.

An order in respect of a relevant social welfare body which is a company may provide that it is to be taken to have met certain relevant procedural requirements¹⁷. An order must not amend the provisions regulating certain trusts¹⁸ but has effect notwithstanding any provision to the contrary in any enactment or in the constitution of the body in question¹⁹. The fact that a provision relating to the constitution of a body has been added or amended by such an order does not preclude its subsequent alteration or deletion in accordance with any relevant powers²⁰. Any person who is a party to an agreement to which a relevant social welfare body is a party which regulates the establishment by it of committees for the discharge of its functions in relation to particular areas may terminate the agreement by giving notice in writing to the other parties to the agreement not later than two months before the specified termination date²¹ (but without prejudice to any right of any party to such an agreement to terminate it at shorter notice)²².

1 As to the Charity Commissioners see CHARITIES vol 8 (2010) PARA 538 et seq.

2 'Employee organisation' means any organisation appearing to the Charity Commissioners to represent in respect of its employment a substantial number of persons whose employers are licensed operators, or who are all employed by the same licensed operator: Coal Industry Act 1987 s 5(4) (substituted by the Coal Industry Act 1994 s 67(1), Sch 9 para 36(b)). For the meaning of 'licensed operator' see PARA 60 note 12 ante.

3 I.e. any trust for purposes which are exclusively charitable according to the law of England and Wales (1) which is a trust of property wholly or partly representing an application of money from the miners' welfare fund

constituted under the Mining Industry Act 1920 s 20 (repealed) or the Coal Industry Social Welfare Organisation; (2) which is a trust expressed to be for the benefit of (a) persons currently or formerly employed in the coal industry or any class of such persons or their dependants; or (b) members of the mining community in general or of the mining community of a particular area, whether or not any other persons are also beneficiaries; or (3) under the terms of which all or a majority of the trustees are appointed by the body mentioned in head (1) supra or are appointed by the British Coal Corporation and an employee organisation: Coal Industry Act 1987 s 5(3). As to the British Coal Corporation see PARAS 2-3 ante. References to the Coal Industry Social Welfare Organisation include references to the trustees of the trust known as the Coal Industry Social Welfare Organisation: see the Coal Industry Act 1994 Sch 9 para 36(a). As to the transfer of the functions of the Coal Industry Social Welfare Organisation to that trust see PARA 87 ante.

4 References to the trustees of a trust include references to the members of any body a function of which is to hold property subject to the trust or to perform any administrative functions in relation to the trust and, in relation to the members of such a body, references to the appointment of trustees are to be construed as references to any corresponding procedure under the provisions relating to the constitution of the body: Coal Industry Act 1987 s 5(5).

5 Ibid s 5(1). Where any functions relating to a trust are exercisable by more than one body of trustees, the Charity Commissioners may disregard or have regard only to the members of one of those bodies: s 5(6).

6 Ibid s 5(2)(a).

7 Ibid s 5(2)(b). See also note 4 supra.

8 Ibid s 5(2)(c).

9 Ibid s 5(2)(d).

10 See ibid s 5(7); the Charities Act 1993 s 97; and CHARITIES. This does not affect any other powers exercisable by the Charity Commissioners or the High Court in relation to trusts to which this provision applies: Coal Industry Act 1987 s 5(9).

The Charities Act 1993 ss 16(3), (9), (11)-(14), 17(1)-(5), (7), 20 apply in relation to the powers of the Charity Commissioners and the making of schemes under the Coal Industry Act 1987 s 5 (as amended) as they apply in relation to their powers and the making of schemes under the Charities Act 1993; and ss 89, 91, 92 apply to orders and decisions under the Coal Industry Act 1987 s 5 (as amended) as they apply to orders and decisions under the Charities Act 1993: Coal Industry Act 1987 s 5(8) (s 5(8) substituted and s 5(8A) added and amended by the Charities Act 1992 s 78(1), Sch 6 para 15; and the Coal Industry Act 1994 s 5(8) further substituted and s 5(8A) amended by the Charities Act 1993 s 98(1), Sch 6 para 23). The Commissioners must not proceed under the Charities Act 1993 s 17 without the like application, and the like notice to the trustees of the trust in question, as would be required if they were proceeding under the Coal Industry Act 1987 s 5(1); but on any application made with a view to a scheme under s 5(1) the Commissioners may proceed under that provision or under the Charities Act 1993 s 17 as appears to them appropriate: Coal Industry Act 1987 s 5(8A) (as so added and amended). As to the settlement of schemes by the Charity Commissioners see CHARITIES vol 8 (2010) PARA 187 et seq.

11 As to the Secretary of State see PARA 4 ante.

12 Ie (1) membership of the body; (2) the right to vote on decisions affecting its affairs; and (3) the right to participate in the management of its affairs in such other ways, if any, as appear to the Secretary of State to be appropriate: Coal Industry Act 1987 s 6(1)(a)-(c). References to membership or a right enjoyed by an organisation include membership or a right enjoyed by any person as a nominee or on behalf of the organisation: s 6(9).

Section 6 is repealed by the Coal Industry Act 1994 s 67(8), Sch 11 Pt III as from a day to be appointed under s 68. At the date at which this volume states the law no such day had been appointed. The repeal of the Coal Industry Act 1987 s 6 is without prejudice to the continuing effect after the time when that repeal comes into force of any order made before that time under s 6: Coal Industry Act 1994 s 67(7), Sch 10 para 11.

13 'Relevant social welfare body' means any body (1) which for the time being exercises functions in connection with the promotion of the social welfare of persons currently or formerly engaged in the coal-mining industry or the dependants of such persons; and (2) whose constitution provides for the British Coal Corporation and one or more organisations representing a substantial proportion of its employees or of any class of them to participate in the management of the body's affairs: Coal Industry Act 1987 s 6(2) (prospectively repealed: see note 12 supra).

14 Ie by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: ibid s 6(10) (prospectively repealed: see note 12 supra).

15 Ibid s 6(1) (prospectively repealed: see note 12 supra). Such an order was made to amend the memorandum and articles of association of the Coal Industry Social Welfare Organisation: see the Coal Industry Social Welfare Organisation (Amendment of Memorandum and Articles) Order 1987, SI 1987/1225.

The order may make such consequential, transitional and supplemental amendments of the constitution of the body as the Secretary of State considers appropriate: Coal Industry Act 1987 s 6(4) (prospectively repealed: see note 12 supra). The power to make an order may only be exercised once as respects any relevant social welfare body unless it is exercised before an order previously made under s 6 (prospectively repealed) has come into force, and so as to amend or revoke that order; but for these purposes the making of an order which is annulled under s 6(10) (prospectively repealed) or quashed under s 8 (proceedings for questioning the validity of orders) (prospectively repealed) is to be disregarded: s 6(11) (prospectively repealed: see note 12 supra).

16 Ibid s 6(6) (prospectively repealed: see note 12 supra). The Secretary of State need not consult any organisation representing employees who are also represented by another organisation which he has consulted: s 6(6) (prospectively repealed: see note 12 supra).

17 See *ibid* s 6(3) (prospectively repealed: see note 12 supra).

18 *Ie* any trust to which *ibid* s 5 (as amended) applies: see note 3 supra.

19 Ibid s 6(5) (prospectively repealed: see note 12 supra).

20 Ibid s 6(7) (prospectively repealed: see note 12 supra).

21 *Ie* the date specified in the notice as the date on which the termination is to take effect: see *ibid* s 6(8) (prospectively repealed: see note 12 supra).

22 Ibid s 6(8) (prospectively repealed: see note 12 supra).

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(v) Dissolution of the British Coal Corporation

89. Reduction in membership and dissolution of the British Coal Corporation.

As soon after the restructuring date¹ as it appears to the Secretary of State² that it is no longer necessary for the British Coal Corporation³ to continue to exist, he may by order dissolve it on a day specified in the order⁴. Before making such an order, the Secretary of State must consult the Corporation and the Coal Authority⁵.

Since 30 June 1995⁶, the following changes have been made to the membership of the Corporation:

- 49 (1) the minimum number of members of the Corporation, in addition to the chairman, has been reduced to one⁷;
- 50 (2) the statutory requirements⁸ as to the persons from amongst whom the members were to be appointed ceased to have effect⁹;
- 51 (3) there is no requirement for a member of the Corporation to be appointed to act as its deputy chairman¹⁰; and
- 52 (4) the Secretary of State may, if he considers it appropriate to do so in consequence of the coming into force of any provision of the Coal Industry Act 1994 or of any restructuring scheme¹¹, by notice in writing remove from office any member of the Corporation, including the chairman¹².

It is expressly provided that certain statutory provisions continue to have effect notwithstanding any repeal that comes into force on the dissolution date¹³.

1 le 31 October 1994: see PARA 3 note 9 ante.

2 As to the Secretary of State see PARA 4 ante.

3 As to the British Coal Corporation see PARAS 2-3 ante.

4 Coal Industry Act 1994 s 23(2). At the date at which this volume states the law no such order had been made.

Any power to make an order under the Coal Industry Act 1994 s 23 is exercisable by statutory instrument; and an order dissolving the Corporation may not be amended or revoked by any order made on or after the dissolution date: s 23(7). Where an order provides for the Corporation to be dissolved with effect from a time which would not ordinarily be the end of a financial year of the Corporation, the financial year of the Corporation which is current at that time is deemed to end at that time and that order may contain such provision as the Secretary of State thinks fit for modifying the effect of any enactment with respect to: (1) the preparation of accounts for the financial year of the Corporation ending with its dissolution; and (2) the making and laying before Parliament of a final report relating to the carrying out of the Corporation's functions during that financial year: s 23(3).

5 Ibid s 23(4). As to the Coal Authority see PARA 52 et seq ante.

6 See the Coal Industry Act 1994 (Commencement No 6) and Membership of the British Coal Corporation (Appointed Day) Order 1995, SI 1995/1507, art 3.

7 Coal Industry Act 1994 s 23(1)(a). The quorum for a meeting of the Corporation is two: see the Coal Industry Nationalisation (National Coal Board) Regulations 1946, SR & O 1946/1094, reg 4 (amended by SI 1995/1506; SI 1997/1588).

8 Ie the Coal Industry Nationalisation Act 1946 s 2(3) (as amended); and the Coal Industry Act 1949 s 1(2) (repealed): see the Coal Industry Act 1994 s 23(1)(b). The Coal Industry Nationalisation Act 1946 s 2 (as amended) is already partly repealed and the remainder is repealed by the Coal Industry Act 1994 s 67(8), Sch 11 Pt IV as from the dissolution date: see PARA 3 note 25 ante. As to the establishment and constitution of the British Coal Corporation see PARA 2 ante.

9 Ibid s 23(1)(b).

10 Ibid s 23(1)(c).

11 As to restructuring schemes see PARA 73 ante.

12 Coal Industry Act 1994 s 23(1)(d). Where any person ceases, by virtue of s 23, to be the chairman or a member of the Corporation before his term of office would otherwise have expired the Secretary of State must, with the consent of the Treasury, determine an amount to be paid to that person by way of compensation for loss of office; and any amount so determined must be paid to that person (1) in the case of loss of office by virtue of a notice under s 23(1)(d), by the Corporation; and (2) in the case of loss of office by virtue of the dissolution of the Corporation, by the Secretary of State out of money provided by Parliament: s 23(5). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

13 Without prejudice to the generality of the powers conferred by virtue of *ibid* s 12 (see PARA 73 ante), where provision is made by any restructuring scheme for the transfer to any person of any liability of the Corporation under s 23(5) or under the Coal Industry Nationalisation Act 1946 s 2(6) (as amended) (salaries, pensions etc for members), the provision in question has effect subject to the transfer, and the transferred liability continues to have effect notwithstanding any repeal that comes into force on the dissolution date: Coal Industry Act 1994 s 23(6). The Coal Industry Nationalisation Act 1946 s 2(6) (as amended) is repealed by the Coal Industry Act 1994 Sch 11 Pt IV as from the dissolution date: see PARA 3 note 25 ante.

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(vi) Abolition of the Domestic Coal Consumers' Council

90. Abolition of the Domestic Coal Consumers' Council.

The Domestic Coal Consumers' Council, which was established by the Coal Industry Nationalisation Act 1946¹ to consider matters affecting the sale or supply of coal, coke or manufactured fuel for domestic and other purposes not involving supply in bulk, was abolished on 1 March 1995².

1 See the Coal Industry Nationalisation Act 1946 s 4 (repealed).

2 Coal Industry Act 1994 s 24(1); Coal Industry (Abolition of Domestic Coal Consumers' Council) Order 1995, SI 1995/255, art 2. As to the power of the Secretary of State to pay compensation to the chairman of the Domestic Coal Consumers' Council in respect of that person's loss of office see the Coal Industry Act 1994 s 24(2), (3). As to the Secretary of State see PARA 4 ante.

UPDATE

90 Abolition of the Domestic Coal Consumers' Council

TEXT AND NOTES--Repealed: Statute Law (Repeals) Act 2004.

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(4) LICENSING OF COAL-MINING OPERATIONS

(i) In general

91. Coal-mining operations to be licensed.

Coal-mining operations¹ which (1) consist in the winning, working or getting (with or without other minerals²) of any coal³, in the treatment of coal in the strata⁴ for the purpose of winning any product of coal or in the winning, working or getting of any product of coal resulting from such treatment⁵; (2) are carried on in relation to coal in any part of Great Britain⁶, in relation to coal under the territorial sea adjacent to Great Britain or in relation to coal in any designated area⁷; and (3) are neither carried on exclusively for the purpose of exploring for coal nor confined to the digging or carrying away of coal that it is necessary to dig or carry away⁸ in the course of activities carried on for purposes which do not include the getting of coal or any product of coal⁹, must not, at any time on or after the restructuring date¹⁰, be carried on by any person except under and in accordance with a licence¹¹.

No such licence, however, is required for the carrying on of any coal-mining operations by or on behalf of the Crown¹².

1 As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

2 For the meaning of 'minerals' see PARA 12 ante.

3 For the meaning of 'coal' see PARA 50 note 10 ante.

4 As to the meaning of 'treatment of coal in the strata' see PARA 50 note 10 ante.

5 Coal Industry Act 1994 s 25(2)(a).

6 For the meaning of 'Great Britain' see PARA 1 note 1 ante.

7 Coal Industry Act 1994 s 25(2)(b). For the meaning of 'designated area' see PARA 67 note 12 ante (definition applied by s 25(5)).

8 The similar words 'necessary to be dug or carried away' appear in the Railways Clauses Consolidation Act 1845 s 77 and in an identical provision in the Railways Clauses Consolidation (Scotland) Act 1845 s 70 (the railway company is not entitled to any mines of coal, ironstone, slate or other minerals under any land purchased by it, except only such parts of them as are necessary to be dug or carried away or used in the construction of the works, unless they have been expressly purchased: see the Railways Clauses Consolidation Act 1845 s 77; and PARA 144 post) and have been judicially considered in that context: see *Nisbet Hamilton v North British Rly Co* (1886) 13 R 454, Ct of Sess (a railway company which had constructed a railway in a cutting was entitled not only to the stone down to the foundation level of the railway line but also, many years later when the stone sides of the cutting had become unsafe through weathering, to remove such stone as was from time to time necessary for the continued safety of the line). It appears that the company itself, acting bona fide, is the judge of what is 'necessary'; and that the only evidence required is the bona fide opinion of its surveyor, engineer or other officer: cf *Errington v Metropolitan District Rly Co* (1882) 19 ChD 559 at 571, CA, per Jessel MR. See also the Coal Act 1938 s 17(1), (3) (repealed); the Coal Industry Nationalisation Act 1946 s 36(1) (repealed); s 63(1) (definition of colliery concern) (prospectively repealed); and PARA 2 text and notes 7, 14 ante. See also PARAS 144 text and note 5, 308 text and note 6 post.

9 Coal Industry Act 1994 s 25(2)(c).

10 ie 31 October 1994: see PARA 3 note 9 ante.

11 Coal Industry Act 1994 s 25(1). The licensing provisions are contained in Pt II (ss 25-36) (as amended). Where a licence from the British Coal Corporation to work or get coal (ie under the Coal Industry Nationalisation Act 1946 s 36(2) (repealed); see PARA 2 ante) was in force immediately before the restructuring date, and that licence authorised the carrying on of any coal-mining operations as mentioned in heads (1)-(3) in the text, the authorisation contained in that licence has effect on and after that date as an authorisation for the carrying on of those operations without a licence under the Coal Industry Act 1994 Pt II and, accordingly, so as to prevent the carrying on of any operations under and in accordance with that authorisation from constituting a contravention (as to the meaning of which see PARA 56 note 7 ante) of s 25(1): s 25(3). Where any authorisation has effect in accordance with this provision, it has effect, except to the extent that a restructuring scheme otherwise provides, subject to the same conditions and to the same powers of revocation and other provisions for expiry and termination as, immediately before the restructuring date, applied to the licence under the Coal Industry Nationalisation Act 1946 s 36(2) (repealed); but as if the powers of the Corporation under that licence were powers of the Coal Authority: Coal Industry Act 1994 s 25(4). As to the Coal Authority see PARA 52 et seq ante. The repeal of the Coal Industry Nationalisation Act 1946 s 36 is without prejudice to so much of any licence under s 36 as has effect (with any modifications) as a contract between the person to whom it is granted and the British Coal Corporation or, as the case may be, any person to whom the Corporation's rights and liabilities under the licence are transferred in accordance with a restructuring scheme: Coal Industry Act 1994 s 67(7), Sch 10 para 6.

12 Ibid s 66(3). As to the application of the Coal Industry Act 1994 to the Crown see PARA 114 post.

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92. Power to grant licences.

The Coal Authority¹ has the power to grant a licence². However, where provision is made by any restructuring scheme³ for any interest⁴ or rights in or in relation to any coal⁵ or coal mine⁶ to be created in any person's favour or to be transferred to any person, and that person requires the interest or rights to enable him to continue, resume or begin the carrying on⁷ of any coal-mining operations⁸, the Coal Industry Act 1994 has effect as if the Secretary of State⁹, as well as the Authority, was entitled, at any time before the coming into force of the scheme, to exercise the Authority's power to grant a licence to that person authorising the carrying on of those operations and, for that purpose, was entitled to act on the Authority's behalf in the exercise of any of its other powers¹⁰.

Without prejudice to the Authority's power (subject to its statutory duties with respect to licensing¹¹, property¹² and safety¹³) to take into account all such factors as it thinks fit in determining whether, and subject to what conditions, to grant a licence, the factors that may be taken into account include, in particular, the terms on which the applicant, or any other applicant with respect to the same area, is offering to acquire from the Authority such an interest in land comprised in the area with respect to which the application is made, or such rights in relation to coal in that area, as, apart from the need for a licence would entitle him to carry on the coal-mining operations to which the application relates¹⁴.

1 As to the Coal Authority see PARA 52 et seq ante.

2 Coal Industry Act 1994 s 26(1). As to the requirement for a licence see PARA 91 ante.

3 As to restructuring schemes see PARA 73 ante.

4 As to the meaning of 'interest' see PARA 52 note 2 ante.

5 For the meaning of 'coal' see PARA 50 note 10 ante.

6 As to the meaning of 'coal mine' see PARA 5 note 15 ante.

7 Ie whether from the coming into force of the scheme or from some future time: see the Coal Industry Act 1994 s 26(6).

8 As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

9 As to the Secretary of State see PARA 4 ante.

10 Coal Industry Act 1994 s 26(6). In practical terms, this power will come to be exercisable after the dissolution date: see PARA 89 ante.

11 Ie under ibid s 2 (see PARA 60 ante).

12 Ie under ibid s 3 (as amended) (see PARA 61 ante).

13 Ie under ibid s 4 (see PARA 62 ante).

14 Ibid s 26(2), (5).

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93. Applications for a licence.

An application for a licence¹ may be made by any person who has acquired, or is proposing to acquire (whether from the Coal Authority² or some other person) (1) such an interest³ in land comprised in the area with respect to which the application is made; or (2) such rights in relation to coal⁴ in that area, as, apart from the need⁵ for a licence, would entitle him to carry on the coal-mining operations⁶ to which the application relates⁷.

Where any area of Great Britain⁸, the territorial sea adjacent to Great Britain or the continental shelf is one (a) interests or rights in which may be acquired (in addition to any such rights as may be contained in a licence) from the Authority; and (b) in relation to which the Authority considers that it is appropriate to do so, the Authority may issue specific or general invitations for applications or, as the case may be, further applications to be made in respect of that area for the grant of licences⁹.

An applicant for a licence must pay to the Authority such fee (if any) in respect of its handling of that application as, having regard to the nature of the application and any information published under statutory requirement to do so¹⁰ with respect to the fixing of the fees for handling applications, the Authority may reasonably require¹¹.

1 Ie a licence under the Coal Industry Act 1994 Pt II (ss 25-36) (as amended): see s 26(2).

2 As to the Coal Authority see PARA 52 et seq ante.

3 As to the meaning of 'interest' see PARA 52 note 2 ante.

4 For the meaning of 'coal' see PARA 50 note 10 ante.

5 See the Coal Industry Act 1994 s 25(1); and PARA 91 ante.

6 As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

7 Coal Industry Act 1994 s 26(2).

8 For the meaning of 'Great Britain' see PARA 1 note 1 ante.

9 Coal Industry Act 1994 s 26(3).

10 Ie under ibid s 30 (see PARA 100 post): see s 26(4).

11 Ibid s 26(4). The Coal Authority publishes from time to time a scale of such fees, details of which are available from its principal office: see PARA 52 note 1 ante.

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94. Authorisation contained in a licence.

The provisions of a licence¹ must specify or describe the coal-mining operations² which, subject to its conditions, are authorised by the licence³. The provisions included must identify the area of Great Britain⁴, the territorial sea adjacent to Great Britain or the continental shelf where the operations are to be carried on⁵, and may restrict the authorisation contained in the licence to operations carried on within a specified period or a period determined in a specified manner⁶.

A licence may provide for the coming into force of the authorisation contained in it, or of any conditions or other provisions of it, to be postponed until after the acquisition by the holder⁷ of the licence of any interest⁸ or right in or in relation to any land or other property or until after such other specified requirements have been satisfied⁹. It may also provide for the licence to lapse if the interest or right is not acquired, or the other requirements are not satisfied, within a specified period¹⁰.

The persons who, so long as the authorisation remains in force, are authorised to carry on the operations to which a licence relates are the holder of the licence and such other persons as may be authorised by the licence or, without any contravention¹¹ of the conditions of the licence, by the holder of the licence to carry on those operations on his behalf¹². A licence may contain provision which, in such cases, in such manner and subject to such conditions or consents as may be specified in the licence, authorises the transfer of any person's rights and obligations as holder of the licence to another person¹³. Particulars of every such transfer must be registered with the Coal Authority¹⁴.

1 Ie a licence under the Coal Industry Act 1994 Pt II (ss 25-36) (as amended): see s 27(1).

2 As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

3 Coal Industry Act 1994 s 27(1).

4 For the meaning of 'Great Britain' see PARA 1 note 1 ante.

5 This may include restrictions as to the depth at which any operations are to be carried on: see the Coal Industry Act 1994 s 27(2).

6 Ibid s 27(2).

7 'Holder', in relation to a licence under ibid Pt II, means (whether or not the authorisation contained in the licence remains in force): (1) in a case where there has been no such transfer in relation to that licence as is mentioned in s 27(5) (see the text to note 13 infra), the person to whom the licence was granted; and (2) in any other case, the person to whom the rights and obligations of the holder of that licence were last transferred: s 65(1).

8 As to the meaning of 'interest' see PARA 52 note 2 ante.

9 Coal Industry Act 1994 s 27(3)(a).

10 Ibid s 27(3)(b).

11 As to the meaning of 'contravention' see PARA 56 note 7 ante.

12 Coal Industry Act 1994 s 27(4). In the case of any licensed operator who is entitled to withdraw support from any land, the rights comprised in his entitlement are also exercisable by any person authorised as mentioned in s 27(4) to act on his behalf in the carrying on of any of the operations which the operator is

authorised to carry on: see s 38(4); and PARA 178 post. For the meaning of 'licensed operator' see PARA 60 note 12 ante.

13 Ibid s 27(5).

14 See *ibid* s 35(1)(c); and PARA 107 post. As to the Coal Authority see PARA 52 et seq ante.

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95. Modification of a licence.

Conditions included in a licence¹ may contain provision for the authorisation² contained in it, and any of the licence conditions³ to cease to have effect, or to be revoked or otherwise modified, at such times, in such manner and in such circumstances as may be specified in or determined under the conditions⁴. In addition, without prejudice to any condition contained in a licence, the conditions and other provisions may be modified by the Coal Authority⁵ with the agreement of the holder of the licence⁶.

1 Ie a licence under the Coal Industry Act 1994 Pt II (ss 25-36) (as amended): see s 28(7).

2 See PARA 94 ante.

3 Ie apart from any conditions included by virtue of the Coal Industry Act 1994 s 28(7): see s 28(7).

4 Ibid s 28(7).

5 As to the Coal Authority see PARA 52 et seq ante.

6 Coal Industry Act 1994 s 27(6). For the meaning of 'holder' see PARA 94 note 7 ante.

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96. Conditions of a licence.

A licence¹ may include such conditions as the Coal Authority², subject to its having regard to its statutory duties with respect to licensing³, property⁴ and safety⁵ and to certain statutory provisions⁶, may think fit⁷.

Conditions included in a licence may contain provision requiring its holder⁸ to render to the Authority (1) payments on the grant or coming into force of the licence⁹; and (2) payments while the licence is in force¹⁰. Such conditions may contain provision requiring the holder of the licence to secure that agreements for such purposes as may be specified in the conditions are entered into between the holder of the licence and any other specified persons¹¹, and that the terms of those agreements satisfy any specified requirements¹². Conditions included in a licence may also contain provision requiring the holder of the licence to comply with any direction given by the Authority as to matters specified in the licence¹³.

Conditions included in a licence may contain provision for disputes between the Authority and the holder of the licence as to any matter to which the licence relates to be referred to the determination of such persons as may be specified in, or appointed in accordance with, the conditions¹⁴. Any dispute to which any such provision applies is to be determined accordingly¹⁵.

Conditions may provide for the authorisation contained in the licence or any of its conditions to cease to have effect, or to be revoked or otherwise modified¹⁶. They may also provide for obligations imposed on any person by the conditions of the licence, and liabilities arising in respect of contraventions¹⁷ by any person of those conditions, to continue in accordance with the licence provisions, and to be capable of arising, after the authorisation contained in the licence has been revoked or is otherwise no longer in force or, where they have already arisen, to continue after the holder's rights and obligations have been transferred to another person¹⁸.

The Coal Authority, as a matter of practice, requires licensed operators¹⁹ to enter into an agreement, the purpose of which is to regulate relationships between licensed operators whose respective mines interact, or have the potential to interact, with one another.

1 Ie a licence under the Coal Industry Act 1994 Pt II (ss 25-36) (as amended): see s 28(1).

2 As to the Coal Authority see PARA 52 et seq ante.

3 Ie under the Coal Industry Act 1994 s 2 (see PARA 60 ante).

4 Ie under ibid s 3 (as amended) (see PARA 61 ante).

5 Ie under ibid s 4 (see PARA 62 ante).

6 Ie ibid ss 29-68 (as amended): see s 28(1).

7 Ibid s 28(1). Sections 28(2)-(8), 29 (see PARA 97 post) are without prejudice to the generality of s 28(1): s 28(9). The conditions that may be included in a licence with respect to the carrying on of the coal-mining operations authorised by the licence include conditions having effect in relation to the carrying on, in association with those operations, of:

28 (1) coal-mining operations for which no authorisation is required (s 28(2)(a));

29 (2) coal-mining operations the authorisation for which is contained in another licence or is conferred by virtue of s 25(3) (see PARA 91 ante) (s 28(2)(b)); or

- 30 (3) any activities carried on for purposes connected with any coal-mining operations to which the conditions relate (s 28(2)(c)).

As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

8 For the meaning of 'holder' see PARA 94 note 7 ante.

9 Coal Industry Act 1994 s 28(3)(a).

10 Ibid s 28(3)(b). The Coal Authority publishes scales of such payments which are revised from time to time.

11 Ibid s 28(4)(a).

12 Ibid s 28(4)(b).

13 Ibid s 28(5).

14 Ibid s 28(6).

15 Ibid s 28(6).

16 See ibid s 28(7); and PARA 95 ante.

17 As to the meaning of 'contravention' see PARA 56 note 7 ante.

18 Coal Industry Act 1994 s 28(8).

19 For the meaning of 'licensed operator' see PARA 60 note 12 ante.

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97. Conditions for the provision of security.

A licence¹ may include conditions which require the holder² of it to provide such security as may be so determined for his performance of any of the obligations to which he is or may become subject, either in accordance with the licence itself or otherwise by virtue of being the holder of it at any time³. Such security may be required, on or before the coming into force of the authorisation contained in the licence and at such subsequent times as may be determined by or under the conditions⁴. The licence may also include conditions which require the licence holder, for the purposes of that security and in relation to any property or rights in which it consists, to take such steps for or in connection with the establishment and maintenance of any trust or other arrangements as may be so determined⁵.

Where such security for the performance of any person's obligations has been so provided⁶ and any trust or other arrangements which have been established and maintained for the purposes of that security have been registered⁷, certain restrictions apply as to the manner in which, and the purposes for which, that security and any property or rights in which it consists are to be applied and enforceable⁸.

1 Ie a licence under the Coal Industry Act 1994 Pt II (ss 25-36) (as amended): see s 29(1).

2 For the meaning of 'holder' see PARA 94 note 7 ante.

3 Coal Industry Act 1994 s 29(1)(a).

4 See *ibid* s 29(1).

5 *Ibid* s 29(1)(b).

6 Ie in accordance with any condition included by virtue of *ibid* s 29(1) in the licence: see s 29(2).

7 Ie under *ibid* s 35(1)(f) (see PARA 107 post): see s 29(2).

8 See *ibid* s 29(2). The manner in which, and the purposes for which, that security and any property or rights in which it consists are to be applied and enforceable (whether in the event of that person's insolvency or otherwise) are to be determined in accordance with the trust or other arrangements and without regard to so much of the Insolvency Act 1986 or any other enactment or rule of law as, in its operation in relation to that person or any conduct of his, would prevent or restrict their being applied in accordance with the trust or other arrangements or would prevent or restrict their enforcement for the purpose of being so applied: s 29(2). As to the insolvency of licensed operators see PARA 98 post. As to insolvency generally see BANKRUPTCY AND INDIVIDUAL INSOLVENCY; COMPANY AND PARTNERSHIP INSOLVENCY.

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98. Insolvency of licensed operators.

In general, a licence¹ and the obligations arising out of or incidental to it are not to be treated as property for the purposes of the Insolvency Act 1986². However, where a licence authorises³ the official receiver⁴ or any person who is for the time being acting as an insolvency practitioner⁵ in relation to the holder⁶ of the licence to carry on any of the coal-mining operations⁷ to which the licence relates or to transfer the rights and obligations of the holder of the licence to another person, he may do so⁸.

Where, in the case of the winding up of a company which is or has been a licensed operator⁹, the liquidator or official receiver sends certain documents or notices¹⁰ to the registrar of companies¹¹, he must also send a copy to the Coal Authority¹².

In the case of any company which is either the holder of a licence¹³, or a licensed operator¹⁴, the Authority is included in the persons who are entitled to make certain applications¹⁵ to cancel or defer the dissolution of a company¹⁶.

1 le a licence under the Coal Industry Act 1994 Pt II (ss 25-36) (as amended): see s 36(1).

2 As to insolvency generally see BANKRUPTCY AND INDIVIDUAL INSOLVENCY; COMPANY AND PARTNERSHIP INSOLVENCY.

3 le by virtue of the Coal Industry Act 1994 s 27(4) or s 27(5) (see PARA 94 ante): see s 36(1).

4 As to the official receiver see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 31 et seq; COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 503 et seq.

5 This reference to a person's acting as an insolvency practitioner is to be construed in accordance with the Insolvency Act 1986 s 388 (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 43; COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 503): Coal Industry Act 1994 s 36(7).

6 For the meaning of 'holder' see PARA 94 note 7 ante.

7 As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

8 Coal Industry Act 1994 s 36(1).

9 For the meaning of 'licensed operator' see PARA 60 note 12 ante.

10 The documents or notices referred to are:

31 (1) any such account or return as is mentioned in the Insolvency Act 1986 s 94(3) or s 106(3) (account of the winding up and return of final meeting or meetings) (Coal Industry Act 1994 s 36(2)(a));

32 (2) any notice for the purposes of the Insolvency Act 1986 s 172(8) (notice of final meeting and of its decisions) (Coal Industry Act 1994 s 36(2)(b));

33 (3) an application under the Insolvency Act 1986 s 202(2) (applications for early dissolution) (Coal Industry Act 1994 s 36(2)(c));

34 (4) a copy of such an order for dissolution of the company as is mentioned in the Insolvency Act 1986 s 204(4) (order for early dissolution in Scotland) (Coal Industry Act 1994 s 36(2)(d)); or

35 (5) such a notice as is mentioned in the Insolvency Act 1986 s 205(1)(b) (notice that winding up complete) (Coal Industry Act 1994 s 36(2)(e)).

11 'Registrar of companies' has the same meaning as in the Companies Act 1985 (see COMPANIES vol 14 (2009) PARA 131): Coal Industry Act 1994 s 36(7).

12 Ibid s 36(2). Where the administrator of a company who has been a licensed operator files a notice with the registrar under the Insolvency Act 1986 s 8, Sch B1 para 84(1) (Sch B1 added by the Enterprise Act 2002 s 8, Sch 16) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 371) he must at the same time send a copy to the Authority: Coal Industry Act 1994 s 36(2A) (added by the Enterprise Act 2002 s 248(3), Sch 17 para 48(1), (2)). A liquidator or administrator who contravenes the Coal Industry Act 1994 s 36(2) or s 36(2A) (as added) is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale: s 36(3) (amended by the Enterprise Act 2002 Sch 17 para 38(1), (3)(a), (b)). However, it is a defence for that person to show that at the time of the contravention he did not know and had no grounds for suspecting that the company in question had ever been a licensed operator: s 36(4). As to the meaning of 'contravention' see PARA 56 note 7 ante. 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (amended by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58(a)); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Powers of Criminal Courts (Sentencing) Act 2000 s 128; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

13 Ie under the Coal Industry Act 1994 Pt II (as amended): see s 36(5)(a).

14 Ie by virtue of ibid s 25(3) (see PARA 91 ante): see s 36(5)(b).

15 Ie under the Companies Act 1985 s 651(1) (as amended) or s 653(2) (see COMPANIES vol 15 (2009) PARA 1535) (application to cancel the dissolution of a company) or under the Insolvency Act 1986 ss 201(3), 202(5), 204(5) or s 205(3) or s 205(5) (applications in the case of a winding up for the deferment of a company's dissolution): Coal Industry Act 1994 s 36(5).

16 Ibid s 36(5). Accordingly, the Companies Act 1985 s 653(1) (as amended) (see COMPANIES vol 15 (2009) PARA 1535) (provision to apply where specified persons feel aggrieved) is to be disregarded where an application under s 653(2) is made by virtue of the Coal Industry Act 1994 s 36(5): s 36(6).

UPDATE

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NOTE 11--Definition of 'registrar of companies' amended: SI 2009/1941.

NOTES 13-16--Reference to Companies Act 1985 ss 651(1) or 653(2) now to Companies Act 2006 s 1029 (see COMPANIES vol 15 (2009) PARA 1535): Coal Industry Act 1994 s 36(5) (amended by SI 2009/1941).

NOTE 16--Coal Industry Act 1994 s 36(6) omitted: SI 2009/1941.

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99. Liability for inaccurate information furnished to the Coal Authority.

Where the conditions of a licence¹ contain provision stating (1) that information of a specified description which is furnished to the Coal Authority² in pursuance of the conditions of the licence may be disclosed by the Authority for specified purposes in pursuance of arrangements³ for making information available⁴; and (2) that any information of that description that is disclosed by the Authority for any of those purposes is to be treated as information whose accuracy the operator has undertaken to secure⁵, the following provisions apply.

The licensed operator⁶ owes a duty to the Authority and to every person likely to be affected by any inaccuracy in information disclosed by the Authority for any of the specified purposes to exercise all due diligence to secure: (a) that the Authority is furnished, in accordance with the conditions of the licence, with all the information of the specified descriptions which the operator is required by those conditions to furnish to the Authority⁷; and (b) that the information of those descriptions which is furnished by the operator to the Authority is accurate in every material particular⁸. Where such a duty is owed by any person to another person, any breach of that duty which causes that other person to sustain loss or damage is actionable against the person in breach at the suit or instance of the other person⁹. However, a person is not liable for any breach of such a duty except (i) in respect of a disclosure of information made by the Authority for a specified purpose¹⁰; and (ii) to the Authority or the person to whom the disclosure was made¹¹.

These provisions are without prejudice to the liability of any person for breach of the duty to comply with an enforcement order¹².

1 I.e. a licence under the Coal Industry Act 1994 Pt II (ss 25-36) (as amended): see s 58(1). As to the conditions that may be contained in a licence see PARAS 96-97 ante.

2 As to the Coal Authority see PARA 52 et seq ante.

3 I.e. under the Coal Industry Act 1994 s 57 (as amended) (see PARA 109 post): see s 58(1)(a).

4 Ibid s 58(1)(a).

5 Ibid s 58(1)(b).

6 For the meaning of 'licensed operator' see PARA 60 note 12 ante.

7 Coal Industry Act 1994 s 58(2)(a).

8 Ibid s 58(2)(b).

9 Ibid s 58(3).

10 Ibid s 58(4)(a).

11 Ibid s 58(4)(b).

12 Ibid s 58(5). As to enforcement orders under Pt II see PARA 101 et seq post.

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100. Publication of licensing arrangements.

The Coal Authority¹ is under a duty to publish, from time to time, such details as it thinks fit of the manner in which it proposes to exercise and perform its powers and duties in relation to the licensing of coal-mining operations², and the arrangements it has made for purposes connected with the exercise and performance of those powers and duties³. These arrangements⁴ include any made with respect to the receipt and consideration, together with any application for a licence, of any application to the Authority for such interests⁵ or rights in or in relation to land or other property as the applicant may wish to acquire from the Authority for purposes connected with the operations to which the application for the licence relates⁶. The Authority must also publish model provisions for inclusion in licences and have regard to the published provisions in determining what provision to incorporate in any such licence⁷.

Anything so published must be published in such manner, and periodically given such further publicity, as appears to the Authority to be appropriate for securing that it is brought to the attention of persons who are likely from time to time to be interested⁸.

1 As to the Coal Authority see PARA 52 et seq ante.

2 Coal Industry Act 1994 s 30(1)(a). The powers and duties referred to are those under ss 25-29: see s 30(1). As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

3 Ibid s 30(1)(b). As to the information published with respect to the fixing of fees for handling applications for licences see s 26(4); and PARA 93 ante.

4 Ie the arrangements referred to in ibid s 30(1)(b): see s 30(2).

5 As to the meaning of 'interest' see PARA 52 note 2 ante.

6 Coal Industry Act 1994 s 30(2).

7 Ibid s 30(3). This provision is without prejudice to the generality of s 30(1) or to the Authority's power to incorporate such provision as it may think fit in any licence (see s 28(1); and PARA 96 ante): s 30(3). As to the conditions that may be contained in a licence see PARAS 96-97 ante.

8 Ibid s 30(4).

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(ii) Enforcement of Licence Conditions

101. Power of the Coal Authority to make enforcement orders.

An enforcement order may be either final or provisional¹. An enforcement order requires the person to whom it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order². It takes effect at such time, being the earliest practicable time, as is determined by or under the order³, and may be revoked at any time by the Coal Authority⁴.

Where the Authority is satisfied (1) that any person is carrying on, or is likely to carry on, any coal-mining operations⁵ in contravention⁶ of the statutory requirement for such operations to be carried on under and in accordance with a licence⁷; or (2) that any person is contravening, or is likely to contravene, any of the conditions of a licence⁸, the Authority may make a final enforcement order to secure that there is no such contravention of that statutory requirement or, as the case may be, that the condition is complied with⁹.

Where (a) it appears to the Authority that any person is carrying on, or is likely to carry on, any coal-mining operations in contravention of the statutory requirement for such operations to be carried on under and in accordance with a licence, or that any person is contravening, or is likely to contravene, any of the conditions of a licence¹⁰; and (b) it appears to the Authority that it is appropriate that a provisional enforcement order be made, the Authority may, instead of taking steps towards the making of a final enforcement order, by a provisional enforcement order make such provision in relation to the person in question as appears to it requisite for the purpose of securing that there is no such contravention of the statutory requirement to carry out coal-mining operations in accordance with a licence or, as the case may be, that the condition is complied with¹¹. In determining whether it is appropriate that a provisional enforcement order be made, the Authority must have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the statutory requirement for such operations to be carried on under and in accordance with a licence¹² or the condition in question, is likely to be done, or omitted to be done, before a final enforcement order may be made¹³.

Where a provisional enforcement order has been made, the Authority must consider whether, for the purpose of giving it final effect, it should be confirmed¹⁴. The Authority is entitled to confirm it, with or without modifications¹⁵, if: (i) it is satisfied that the person to whom the order relates is carrying on, or is likely to carry on, any coal-mining operations in contravention of the statutory requirement to carry out coal-mining operations in accordance with a licence, or is contravening, or is likely to contravene, any of the licence conditions¹⁶; and (ii) the provision made by the order (with any modifications) is requisite for the purpose of securing that there is no contravention of the statutory requirement to carry out coal-mining operations in accordance with a licence or, as the case may be, that that condition is complied with¹⁷.

The Authority may not make a final enforcement order or make or confirm a provisional enforcement order in relation to any person if it is satisfied that that person has agreed to take, and is taking, all such steps as it appears to the Authority for the time being to be appropriate for him to take for the purpose of securing that there is no contravention of the statutory requirement to carry out coal-mining operations in accordance with a licence, or that the condition in question is complied with¹⁸. Nor may the Authority make a final enforcement order

or make or confirm a provisional enforcement order if it is satisfied that the contravention of the statutory requirement to carry out coal-mining operations in accordance with a licence, or the contravention of that condition is of a trivial nature¹⁹.

The power to make an enforcement order does not prejudice the right of the Authority, where any sum is due to it under any condition in a licence, to enforce that condition in proceedings to recover that sum as an amount due to the Authority by virtue of an enactment²⁰.

1 'Enforcement order' means a final enforcement order or a provisional enforcement order; 'final enforcement order' means an order under the Coal Industry Act 1994 s 31 other than a provisional enforcement order; and 'provisional enforcement order' means an order under s 31 which, if not previously confirmed for the purpose of giving it final effect (see s 31(4); and the text to note 14 infra), will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order: s 31(7).

The main practical differences between a provisional order and a final order are that the procedural requirements of giving notice and of specifying the period for the consideration of representations and objections (see s 32; and PARA 102 post) which apply to a final order do not apply to a provisional order. Also, a provisional order has effect only for a limited period and ceases to have effect at the end of the period (not exceeding three months) specified in the order (see s 31(7)). The Coal Authority must, in considering whether to make a provisional or a final order, have regard in particular to the extent to which any person is likely to sustain loss or damage in consequence of the unlicensed mining or, as the case may be, the breach of a particular licence condition (see s 31(3); and the text to note 13 infra). It is therefore suggested that a provisional order will be appropriate where the Authority considers it necessary to act quickly, whether to avoid such loss or damage, or for some other reason. As to the Coal Authority see PARA 52 et seq ante.

2 Ibid s 31(6)(a).

3 Ibid s 31(6)(b).

4 Ibid s 31(6)(c). As to the procedural requirements for revoking enforcement orders see PARA 103 post.

5 As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

6 As to the meaning of 'contravention' see PARA 56 note 7 ante.

7 See the Coal Industry Act 1994 s 25(1); and PARA 91 ante.

8 Ie under ibid Pt II (ss 25-36) (as amended): see s 31(1). As to the conditions that may be contained in a licence see PARAS 96-97 ante.

9 Ibid s 31(1). This provision is subject to ss 31(2), (5), 32: see s 31(1).

10 See ibid s 31(1).

11 Ibid s 31(2). This provision is subject to s 31(5): see s 31(2).

12 See ibid s 25(1); and PARA 91 ante.

13 Ibid s 31(3).

14 Ibid s 31(4).

15 As to the meaning of 'modifications' see PARA 50 note 4 ante.

16 Coal Industry Act 1994 s 31(4)(a).

17 Ibid s 31(4)(b).

18 Ibid s 31(5)(a).

19 Ibid s 31(5)(b).

20 Ibid s 31(8). Sections 32, 33 (see PARAS 102-105 post) are also without prejudice to this right: see s 31(8).

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102. Notice requirements for enforcement orders.

Before making a final enforcement order¹ or confirming a provisional enforcement order², the Coal Authority³ must give notice⁴ to the person to whom the order relates and must consider any representations or objections which are made and not withdrawn⁵. The notice must state that the Authority proposes to make or confirm the order and set out its effect⁶. It must also set out:

- 53 (1) any condition of the licence⁷ for the purpose of securing compliance with which the order is to be made or confirmed⁸;
- 54 (2) the acts or omissions which, in the Authority's opinion, constitute or would constitute contraventions of the statutory requirement to carry out coal-mining operations⁹ in accordance with a licence¹⁰ or, as the case may be, that condition¹¹; and
- 55 (3) any other matters which, in the Authority's opinion, justify the making or confirmation of the order¹².

The notice must specify the period (which must not be less than 28 days from the date of the service) within which representations or objections with respect to the proposed order or proposed confirmation may be made¹³.

The Authority, having given notice, may not make a final enforcement order with modifications¹⁴ that are not contained in the notice or confirm a provisional enforcement order with any such modifications, unless the person to whom the order relates has consented to the modifications, or the Authority has complied with certain requirements¹⁵.

As soon as practicable after making a final enforcement order or making or confirming a provisional enforcement order, the Authority must serve a copy of the order or, as the case may be, of the order as confirmed, on the person to whom it relates¹⁶, and take such steps (if any) for publishing notice of the order and, where the case so requires, of its confirmation and any modifications subject to which it is confirmed as the Authority considers appropriate to bring the matters in the notice to the attention of persons likely to be affected by them¹⁷.

1 For the meaning of 'final enforcement order' see PARA 101 note 1 ante.

2 For the meaning of 'provisional enforcement order' see PARA 101 note 1 ante.

3 As to the Coal Authority see PARA 52 et seq ante.

4 The notice is given by serving it, together with a copy of the proposed order (or in the case of the confirmation of a provisional order, a copy of the order as proposed to be confirmed) on the person to whom the order relates (Coal Industry Act 1994 s 32(2)(a)), and by taking such steps (if any) for publishing a copy of the notice as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them and of enabling them to make representations and objections within the period specified in the notice (s 32(2)(b)). As to the service of documents see PARA 112 post.

5 See *ibid* s 32(1).

6 *Ibid* s 32(1)(a).

7 As to the conditions that may be contained in a licence see PARAS 96-97 ante.

8 Coal Industry Act 1994 s 32(1)(b)(i).

9 As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

10 See the Coal Industry Act 1994 s 25(1); and PARA 91 ante.

11 Ibid s 32(1)(b)(ii).

12 Ibid s 32(1)(b)(iii).

13 Ibid s 32(1)(c).

14 As to the meaning of 'modifications' see PARA 50 note 4 ante.

15 See the Coal Industry Act 1994 s 32(3). The requirements referred to in the text are as follows. The Authority must:

36 (1) serve on the person to whom the order relates such notice as appears to it requisite of its proposal to make or confirm the order with modifications (s 32(4)(a));

37 (2) in that notice specify the period (not being less than 28 days from the date of its service on the person to whom the order relates) within which representations or objections with respect to the proposed modifications may be made (s 32(4)(b));

38 (3) take such steps (if any) for publishing a copy of the notice as it considers appropriate for the purpose of bringing the proposal to the attention of persons likely to be affected by it and of enabling them to make representations and objections within the period specified in the notice (s 32(4)(c)); and

39 (4) consider any representations or objections which are duly made and not withdrawn (s 32(4)(d)).

16 Ibid s 32(5)(a).

17 Ibid s 32(5)(b).

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103. Revocation of enforcement orders.

The Coal Authority¹ may revoke an enforcement order at any time². Before revoking an enforcement order, other than an unconfirmed provisional enforcement order³, the Authority must give notice⁴ stating that it proposes to revoke the order and setting out the effect of the order; and specifying the period (not being less than 28 days from the date of the service) within which representations or objections with respect to the proposed revocation may be made⁵. Before revoking the order, the Authority must also consider any representations or objections which are duly made and not withdrawn⁶. If, after giving the notice, the Authority decides not to revoke the order, it must give notice of its decision⁷.

1 As to the Coal Authority see PARA 52 et seq ante.

2 Coal Industry Act 1994 s 31(6)(c). For the meaning of 'enforcement order' see PARA 101 note 1 ante.

3 For the meaning of 'provisional enforcement order' see PARA 101 note 1 ante.

4 Notice is given (1) by serving it on the person to whom the order relates (Coal Industry Act 1994 s 32(8) (a)); and (2) by taking such steps (if any) for publishing a copy of the notice as the Authority considers appropriate for the purpose of bringing the matters contained in the notice to the attention of persons likely to be affected by them and, in the case of a notice under s 32(6), of enabling them to make representations and objections within the period specified in the notice (s 32(8)(b)). As to the service of documents see PARA 112 post.

5 Ibid s 32(6).

6 Ibid s 32(6).

7 Ibid s 32(7).

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104. Validity of enforcement orders.

Any person to whom an enforcement order¹ relates who is aggrieved² by the order and desires to question its validity on the ground that its making or confirmation was not within the statutory powers of the Coal Authority³, or that any of the procedural requirements were not complied with in relation to it⁴, may make an application to the court⁵ within the specified time limit⁶. On any such application the court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the applicant were substantially⁷ prejudiced by a failure to comply with those requirements, quash the order or any provision of the order⁸.

1 For the meaning of 'enforcement order' see PARA 101 note 1 ante.

2 As to persons aggrieved see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 48.

3 Ie within the powers conferred by the Coal Industry Act 1994 s 31 (see PARA 101 ante): see s 33(1). As to the Coal Authority see PARA 52 et seq ante.

4 Ie the requirements of ibid s 32 (see PARAS 102-103 ante): see s 33(1).

5 For these purposes, 'the court' means the High Court in relation to England and Wales and the Court of Session in relation to Scotland: ibid s 33(8).

6 Ibid s 33(1). The validity of an enforcement order may not be questioned by any legal proceedings whatever, except as provided by s 33: s 33(3). The specified time limit is 42 days from the date of service of a copy of the order or, as the case may be, of the order as confirmed: s 33(1). As to the time within which an act must be done see TIME vol 97 (2010) PARA 336 et seq.

7 'Substantial' has been held to mean 'considerable': see *Palser v Grinling* [1948] AC 291 at 317, [1948] 1 All ER 1 at 11, HL, per Viscount Simon; applied in *Atkinson v Bettison* [1955] 3 All ER 340 [1955] 1 WLR 1127, CA. 'Substantial' is a question of degree and therefore one of fact (*King Features Syndicate Inc v O and M Kleeman Ltd* [1941] AC 417, [1941] 2 All ER 403, HL; *Atkinson v Bettison* supra) and may be used in contradistinction to 'trivial and not worth consideration' (*Langham v City of London Corp* [1949] 1 KB 208 at 213, [1948] 2 All ER 1018 at 1020, CA, per Birkett J).

8 Coal Industry Act 1994 s 33(2).

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105. Effect of enforcement orders.

The obligation to comply with an enforcement order¹ is a duty owed to any person who may be affected by a contravention² of the order³. Any breach of this duty which causes the person to whom it is owed to sustain loss or damage is actionable against the person in breach at the suit or instance of that other person⁴. In any such proceedings it is a defence for the person by whom the duty is owed to show that he took all reasonable steps and exercised all due diligence⁵ to avoid the contravention of the order⁶.

Compliance with any enforcement order is enforceable by civil proceedings by the Coal Authority for an injunction or for any other appropriate relief⁷. This does not affect any right which any person to whom the duty to comply with an enforcement order is owed may have to bring civil proceedings in respect of any contravention or apprehended contravention of the order⁸.

1 For the meaning of 'enforcement order' see PARA 101 note 1 ante.

2 As to the meaning of 'contravention' see PARA 56 note 7 ante.

3 Coal Industry Act 1994 s 33(4).

4 Ibid s 33(5). It is submitted that the person by whom the duty is owed (ie the person under the obligation to comply with the enforcement order) can only be the person to whom the order relates, and is therefore the person whom the Coal Authority is satisfied is carrying on, or is likely to carry on, coal-mining operations in contravention of the licensing requirements contained in s 25(1) (see PARA 91 ante), or whom the Authority is satisfied is contravening, or is likely to contravene, any of the provisions of a licence under Pt II (ss 25-36) (as amended) (see s 31(1); and PARA 101 ante). As to the Coal Authority see PARA 52 et seq ante.

5 Whether or not the accused has exercised all due diligence is a question of fact: see *R C Hammett Ltd v Crabb* (1931) 145 LT 638, HL. The failure of the directors of a limited company to exercise due diligence is the failure of the company (*Pearce v Cullen* (1952) 96 Sol Jo 132) but the failure of subordinate managers and similar employees of a large-scale business to exercise due diligence is not necessarily the failure of the company (*Tesco Supermarkets Ltd v Natrass* [1972] AC 153, [1971] 2 All ER 127, HL).

6 Coal Industry Act 1994 s 33(6).

7 Ibid s 33(7). As to injunctions generally see CIVIL PROCEDURE vol 11 (2009) PARA 331 et seq.

8 Ibid s 33(7).

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106. Coal Authority's power to require information for the purposes of enforcement.

Where it appears to the Coal Authority¹ that there is, or may have been, a contravention² of the statutory requirement to carry out coal-mining operations³ in accordance with a licence⁴, or that any person is contravening, or may have contravened, any condition of a licence, the Authority may, for any purpose connected with its relevant enforcement functions⁵, serve a notice⁶ on any person⁷. The notice either (1) requires the person on whom it is served⁸ to produce, at a specified time and place, to the Authority or to any person appointed by the Authority, any documents which are specified in the notice and are in that person's possession or under his control⁹; or (2) requires that person, if he is carrying on a business¹⁰, to furnish the Authority, at a specified time and place and in a specified form and manner, with such information as may be specified in the notice¹¹. However, no person is required to produce any documents which he could not be compelled to produce in civil proceedings in the court or, in complying with any requirement for the furnishing of information, to disclose any information which he could not be compelled to give in evidence in any such proceedings¹².

A person who, without reasonable excuse¹³, fails to do anything required of him by such a notice is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale¹⁴. A person who intentionally alters, suppresses or destroys any document which he has been required by notice to produce is guilty of an offence and liable on summary conviction, to a fine not exceeding the statutory maximum¹⁵; and on conviction on indictment, to a fine¹⁶. Proceedings for such offences are to be instituted in England and Wales only by, or on behalf of, the Coal Authority or the Director of Public Prosecutions¹⁷.

If a person defaults in complying with such a notice, the court¹⁸ may, on the application of the Authority, make such order as it thinks fit for requiring the default to be made good; and any such order may provide that all the costs of the application are to be borne by the person in default or by any officers of a company¹⁹ or other association who are responsible for its default²⁰.

1 As to the Coal Authority see PARA 52 et seq ante.

2 As to the meaning of 'contravention' see PARA 56 note 7 ante.

3 For the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

4 See the Coal Industry Act 1994 s 25(1). The licence referred to is a licence under Pt II (ss 25-36) (as amended): see s 34(1).

5 Ie under ibid s 31 (see PARA 101 ante): see s 34(1).

6 Ie under ibid s 34(2) (see the text to notes 8-11 infra): see s 34(1).

7 Ibid s 34(1).

8 As to the service of documents see PARA 112 post.

9 Coal Industry Act 1994 s 34(2)(a). As to the disclosure of documents in a party's possession see CIVIL PROCEDURE vol 11 (2009) PARAS 538-583).

10 As to the meaning of 'business' see PARA 72 note 12 ante.

11 Coal Industry Act 1994 s 34(2)(b).

12 Ibid s 34(3).

13 What amounts to 'reasonable excuse' is largely a matter of fact: *Leck v Epsom RDC* [1922] 1 KB 383. However, ignorance of the statutory provisions provides no reasonable excuse (*Aldridge v Warwickshire Coal Co Ltd* (1925) 133 LT 439, CA), nor does a mistaken view of those provisions (*R v Philip Reid* [1973] 3 All ER 1020, [1973] 1 WLR 1283, CA). Quaere whether reliance on the advice of an expert can amount to reasonable excuse: see *Saddleworth UDC v Aggregate and Sand Ltd* (1970) 69 LGR 103.

14 Coal Industry Act 1994 s 34(4). As to the standard scale see PARA 98 note 12 ante.

15 Ibid s 34(5)(a). The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 140. The 'prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1) (as substituted): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 141.

16 Coal Industry Act 1994 s 34(5)(b).

17 Ibid s 34(7).

18 For the meaning of 'the court' see PARA 104 note 5 ante.

19 For the meaning of 'company' see PARA 73 note 14 ante.

20 Coal Industry Act 1994 s 34(6).

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(5) REGISTRATION AND INFORMATION

107. Register of licences and orders.

The Coal Authority¹ is required to establish and maintain a register in which it enters particulars of:

- 56 (1) every licence granted under Part II of the Coal Industry Act 1994² and every pending application for such a licence³;
- 57 (2) every licence under the Coal Industry Nationalisation Act 1946 in force immediately before the restructuring date⁴ in pursuance of which any person is or has been entitled⁵ to carry on coal-mining operations⁶;
- 58 (3) every transfer, in accordance with the provisions of a licence, of the rights and obligations of any person as the holder⁷ of that licence⁸;
- 59 (4) every revocation of, or of the authorisation contained in, a licence falling within head (1) or head (2) above⁹;
- 60 (5) every other such modification¹⁰ of a licence falling within head (1) or head (2) above as relates to the particulars of that licence which are entered in the register¹¹;
- 61 (6) such trusts and other arrangements as for the time being have effect for the purposes of any security provided under the conditions included in licences¹² in pursuance of the Coal Authority's duty¹³ to carry out its functions in the manner best calculated to secure, so far as practicable, that persons to whom obligations are owed in respect of subsidence damage¹⁴ do not sustain loss in consequence of any failure by a licensed operator¹⁵ to make such financial provision for meeting liabilities as might reasonably have been required of that person¹⁶; and
- 62 (7) every enforcement order¹⁷, every confirmation of a provisional enforcement order¹⁸, the terms on which every confirmed order is confirmed and every revocation of an enforcement order¹⁹.

The particulars entered in the register in relation to any licence are confined to:

- 63 (a) the date of the grant of the licence and the time of the coming into force of the authorisation contained in the licence²⁰;
- 64 (b) the identity of the person to whom the licence is granted and a description of any other persons who are entitled, under the licence, to carry on the coal-mining operations to which it relates²¹;
- 65 (c) the area to which the authorisation contained in the licence relates²²;
- 66 (d) any restrictions contained in the licence as to the depth at which the coal-mining operations authorised by the licence may be carried on²³;
- 67 (e) any other provisions of the licence restricting the authorised coal-mining operations to specified descriptions of operations²⁴;
- 68 (f) any area designated by the licence as the area of responsibility²⁵ of the holder of the licence²⁶;
- 69 (g) any provision included in the licence for the purposes of the provisions relating to the disclosure of information²⁷ and any conditions requiring the

- disclosure of information which may be of the description specified for those purposes²⁸; and
- 70 (h) any provisions of the licence for the expiry of the authorisation contained in the licence or for determining when an area ceases to be the area of responsibility of the holder of the licence²⁹.

The particulars entered in the register in relation to any pending application for a licence are confined to so much of the application as contains proposals with respect to any of the matters mentioned in heads (a) to (h) above³⁰.

The information contained in the register is, subject to certain exceptions, available to the public³¹.

- 1 As to the Coal Authority see PARA 52 et seq ante.
- 2 Is a licence under the Coal Industry Act 1994 Pt II (ss 25-36) (as amended): see s 35(1)(a).
- 3 Ibid s 35(1)(a).
- 4 Is a licence under the Coal Industry Nationalisation Act 1946 s 36(2) (repealed). As to the restructuring date (ie 31 October 1994) see PARA 3 note 9 ante.
- 5 Is by virtue of the Coal Industry Act 1994 s 25(3) (see PARA 91 ante): see s 35(1)(b).
- 6 Ibid s 35(1)(b). As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante.
- 7 For the meaning of 'holder' see PARA 94 note 7 ante.
- 8 Coal Industry Act 1994 s 35(1)(c); and see PARA 94 ante.
- 9 Ibid s 35(1)(d); and see PARA 94 ante.
- 10 As to the meaning of 'modifications' see PARA 50 note 4 ante.
- 11 Coal Industry Act 1994 s 35(1)(e). As to the modification of licences see PARA 95 ante.
- 12 As to the conditions that may be contained in a licence see PARAS 96-97 ante.
- 13 Is under the Coal Industry Act 1994 s 2(1)(c) (see PARA 60 ante): see s 35(1)(f).
- 14 As to subsidence damage by coal mining see PARA 202 et seq post.
- 15 For the meaning of 'licensed operator' see PARA 60 note 12 ante.
- 16 Coal Industry Act 1994 s 35(1)(f). The particulars entered in the register in relation to any trust or other arrangements falling within head (6) in the text are confined to particulars identifying the form (but not the value or amount) of the security in question, the person who provided the security and the trustees or other person responsible for administering the security or determining the use to which it is put: s 35(4).
- 17 For the meaning of 'enforcement order' see PARA 101 note 1 ante. As to enforcement orders see PARA 101 et seq ante.
- 18 For the meaning of 'provisional enforcement order' see PARA 101 note 1 ante.
- 19 Coal Industry Act 1994 s 35(1)(g).
- 20 Ibid s 35(2)(a). As to the power to grant licences see PARA 92 ante; and as to the authorisations contained in licences see PARA 94 ante.
- 21 Ibid s 35(2)(b). As to applications for licences see PARA 93 ante.
- 22 Ibid s 35(2)(c).
- 23 Ibid s 35(2)(d).

- 24 Ibid s 35(2)(e).
- 25 Ie under ibid s 37 (see PARA 207 post): see s 35(2)(f).
- 26 Ibid s 35(2)(f).
- 27 See ibid s 58; and PARA 99 ante.
- 28 Ibid s 35(2)(g).
- 29 Ibid s 35(2)(h).
- 30 Ibid s 35(3).
- 31 See ibid s 57 (as amended); and PARA 109 post.

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Registration of rights.

108. Registration of rights.

The Coal Authority¹ is required to establish and maintain a register in which it enters particulars of certain notices, orders, designations, confirmations of orders and agreements². It must also preserve a copy of every document particulars of which are entered in that register³.

If any person furnishes the Authority with any information for these purposes which he knows to be false in a material particular, or recklessly furnishes the Authority with any information which is false in a material particular, he is guilty of an offence and liable on summary conviction, to a fine not exceeding the statutory maximum⁴, and on conviction on indictment, to a fine⁵.

1 As to the Coal Authority see PARA 52 et seq ante.

2 Particulars of the following are required to be entered in the register:

- 40 (1) every notice under the Coal Industry Act 1994 s 38 (right to withdraw support) (see PARA 178 post) a copy of which is sent to the Coal Authority by the person giving it (s 56(1)(a));
- 41 (2) every notice published under the Coal Industry Act 1975 s 2 (repealed) (notices conferring right for the British Coal Corporation to withdraw support) (see PARA 178 post) a copy of which has been supplied to the Authority by the Corporation (Coal Industry Act 1994 s 56(1)(b));
- 42 (3) every public notice under the Coal Act 1938 Sch 2 para 6(2) (repealed) (withdrawal of support) a copy of which has been supplied to the Authority by the Corporation (Coal Industry Act 1994 s 56(1)(c));
- 43 (4) every notice given by the Authority under s 41 (revocation of right to withdraw support) (see PARA 180 post) (s 56(1)(d));
- 44 (5) every notice given for the purposes of s 49 (rights to work coal in former copyhold land) (see PARA 400 post) a copy of which is sent to the Authority by the person giving it (s 56(1)(e));
- 45 (6) every notice published under the Coal Industry Act 1975 s 3 (repealed) (notices conferring right for the Corporation to work coal in copyhold land) (see PARA 400 post), a copy of which has been supplied to the Authority by the Corporation (Coal Industry Act 1994 s 56(1)(f));
- 46 (7) every notice sent to the Authority under s 49(7), Sch 7 para 9 (see PARA 402 post) and so much of any information known to the Authority as (a) relates to any compensation paid under the Coal Industry Act 1975 s 3(4) (repealed) or to any agreement for the purposes of s 3, Sch 2 para 8 (repealed); and (b) is information which, in the case of any compensation or agreement under or for the purposes of the Coal Industry Act 1994 Sch 7 Pt I (see PARA 400 et seq post), would fall to be included in such a notice (s 56(1)(g));
- 47 (8) the following: (a) every compulsory rights order under the Opencast Coal Act 1958 (see PARA 422 et seq post); (b) every order under s 15 (as substituted and amended) (see PARA 415 et seq post) or s 16 (as amended) (see PARA 421 post) (rights of way, drainage and water supply); and (c) every designation under s 39 (as amended) (see PARAS 411-412 post), in so far as it is an order or designation made by the Authority or an order or designation of which a copy has been supplied to the Authority by the Corporation (Coal Industry Act 1994 s 56(1)(h));
- 48 (9) every confirmation of an order mentioned in head (8)(a) or (b) supra and every notice or other document for the purposes of the Opencast Coal Act 1958 which is, or a copy of which is, sent to the Authority under that Act or a copy of which has been supplied to the Authority by the Corporation (Coal Industry Act 1994 s 56(1)(i)); and

- 49 (10) every agreement entered into with a local planning authority for the purposes of the Opencast Coal Act 1958 s 15(5) (s 15 as substituted and amended: see PARA 415 et seq post) (agreements as to the restoration of a right of way) (Coal Industry Act 1994 s 56(1)(j)).

References to the supply to the Coal Authority by the British Coal Corporation of a copy of any document include references to the transfer in accordance with a restructuring scheme of possession of the document itself or of any copy of that document: s 56(6). As to the British Coal Corporation see PARAS 2-3 ante. As to copyhold land see CUSTOM AND USAGE; REAL PROPERTY.

- 3 Ibid s 56(4).
- 4 Ibid s 56(5)(a). As to the statutory maximum see PARA 106 note 15 ante.
- 5 Ibid s 56(5)(b).

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109. Public access to information held by the Coal Authority.

The Coal Authority¹ is required to establish and maintain arrangements under which every person is entitled, in such cases, on payment to the Authority of such fee² and subject to such other conditions as the Authority may consider appropriate (1) to be furnished with certain information³; (2) to have the contents of so much of the records⁴ maintained by the Authority as contains any such information made available to him, at such office of the Authority as it may determine, for inspection at such times as may be reasonable⁵; and (3) to make or be supplied with copies of, or of extracts from, so much of the records maintained by the Authority as contains any such information⁶.

The information which must be made available in this way is: (a) that contained in the register of licences and orders⁷; (b) that contained in the register of rights⁸; and (c) any of the following information which is for the time being in the possession of the Authority:

- 71 (i) information about the geological or physiographical features or characteristics of any land in which any unworked coal⁹ or any coal mine¹⁰ is situated or of any other land¹¹;
- 72 (ii) information about the identity of the persons in whom interests¹² and rights in any unworked coal or coal mine have been vested¹³;
- 73 (iii) the contents of the plans of any coal mines or coal workings¹⁴;
- 74 (iv) any other information about proposals for the carrying on by any person of any coal-mining operations¹⁵;
- 75 (v) information about any subsidence or subsidence damage¹⁶ or about claims made under the Coal Mining Subsidence Act 1991¹⁷; and
- 76 (vi) information about such other matters as the Secretary of State¹⁸ may prescribe by regulations¹⁹.

The Authority must maintain such records of any information which comes into its possession and which falls into heads (a) to (c) above as it considers appropriate²⁰.

Certain designated types of information are, however, excluded from the information which is to be made available to any person in pursuance of these arrangements²¹. In particular, the Authority is not required or authorised to disclose any information which relates to the affairs of an individual or specifically to the affairs of any body of persons (whether corporate or unincorporate), including the Authority itself, and which is not contained in the register of licences and orders²² or the register of rights²³, if the disclosure of that information would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of the individual or body concerned²⁴. Similarly, the arrangements do not require or authorise the Authority to disclose, without the consent of the person to whom it owes the obligation of confidence, any information which has been furnished to it under certain provisions²⁵ or which, under the provisions of the licence²⁶, agreement or undertaking given by the Authority to the applicant for the purposes of that application, is to be treated as subject to an obligation of confidence owed by the Authority to any other person²⁷. However, the information that is to be excluded from that which is to be made available to any person in pursuance of these arrangements does not include any information that appears to the Authority to relate to matters which are or may be relevant to the safety of members of the public or of any

particular individual or individuals other than the person whose consent is required for its disclosure²⁸.

1 As to the Coal Authority see PARA 52 et seq ante.

2 As to the charging of fees by the Coal Authority see PARA 64 ante.

3 Coal Industry Act 1994 s 57(2)(a); and see the text to notes 7-19 infra.

4 For these purposes, 'records' includes registers, maps, plans and accounts, as well as computer records and other records kept otherwise than in documentary form: *ibid* s 57(8). Records of the Coal Authority are public records for the purposes of the Public Records Act 1958: see s 10, Sch 1 para 3 Table Pt II (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 835.

5 Coal Industry Act 1994 s 57(2)(b).

6 *Ibid* s 57(2)(c).

7 *Ie* under *ibid* s 35 (see PARA 107 ante).

8 *Ie* under *ibid* s 56 (see PARA 108 ante).

9 For the meaning of 'coal' see PARA 50 note 10 ante.

10 As to the meaning of 'coal mine' see PARA 5 note 15 ante.

11 Coal Industry Act 1994 s 57(1)(a).

12 As to the meaning of 'interest' see PARA 52 note 2 ante.

13 Coal Industry Act 1994 s 57(1)(b).

14 *Ibid* s 57(1)(c).

15 *Ibid* s 57(1)(d). As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

16 For the meaning of 'subsidence damage' see PARA 205 post. As to subsidence damage by coal mining see PARA 202 et seq post.

17 Coal Industry Act 1994 s 57(1)(e).

18 As to the Secretary of State see PARA 4 ante.

19 Coal Industry Act 1994 s 57(1)(f). The power to make regulations for these purposes is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 57(7). At the date at which this volume states the law no such regulations had been made.

20 *Ibid* s 57(6).

21 See the text to notes 22-28 infra.

22 See note 7 supra.

23 See note 8 supra.

24 Coal Industry Act 1994 s 57(3). This provision is subject to s 57(5) (see the text to note 28 infra): s 57(3).

25 *Ie* (1) in pursuance of the provisions of a licence under *ibid* Pt II (ss 25-36) (as amended); (2) in pursuance of any provisions of an agreement entered into in connection with, or with any proposals for, the carrying on of any activities in the course of any exploration for coal or of any activities for which a licence under the Petroleum Act 1998 s 3 (as amended) (see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1639) is required; or (3) for the purposes of any application to the Authority for the grant of a licence under the Coal Industry Act 1994 Pt II, for the making of such an agreement or for the transfer or creation of any interests or rights in or in relation to any land: s 57(4)(a) (amended by the Petroleum Act 1998, s 50, Sch 4 para 38(4)).

26 *Ie* under the Coal Industry Act 1994 Pt II: see s 57(4)(b).

27 Ibid s 57(4)(b). As to the information to be kept confidential by the Authority see PARA 110 post. As to obligations of confidence generally see CONFIDENCE AND DATA PROTECTION.

28 Ibid s 57(5).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/3. REORGANISATION OF THE COAL INDUSTRY/(5) REGISTRATION AND INFORMATION/110. Information to be kept confidential by the Coal Authority.

110. Information to be kept confidential by the Coal Authority.

It is the duty of the Coal Authority¹ to establish and maintain such arrangements as it considers best calculated to secure that information which (1) is in its possession in consequence of either the carrying out of any of its functions or the transfer to it, in accordance with a restructuring scheme², of any records³; and (2) relates to the affairs of any individual or to any particular business⁴, is not, during the lifetime of that individual or so long as that business continues to be carried on, disclosed to any person without the consent of that individual or, as the case may be, of the person for the time being carrying on that business⁵. This does not, however, authorise or require the making of arrangements which prevent the disclosure of information:

- 77 (a) for the purpose of facilitating the carrying out by the Secretary of State⁶, the Treasury or the Coal Authority of any of their functions under the Coal Industry Act 1994⁷;
- 78 (b) in pursuance of public access arrangements⁸;
- 79 (c) for the purpose of facilitating the carrying out by any relevant authority⁹ of any of the functions in relation to which it is such an authority¹⁰;
- 80 (d) in connection with the investigation of any criminal offence or for the purposes of criminal proceedings¹¹;
- 81 (e) for the purposes of any civil proceedings brought under the Coal Industry Act 1994 or any relevant enactment¹², of any proceedings before the Lands Tribunal¹³ under the Coal Mining Subsidence Act 1991 or of any arbitration for which provision is made by regulations¹⁴ in relation to disputes as to subsidence matters¹⁵; or
- 82 (f) in pursuance of any Community obligation¹⁶.

These provisions do not limit the matters which may be contained in the annual report of the Coal Authority¹⁷ or in a report on the operation of the Coal Mining Subsidence Act 1991¹⁸. Nor do they restrict or prohibit the disclosure of any information which has already been made public (i) as part of such a report¹⁹; (ii) in pursuance of any public access arrangements²⁰; (iii) under any of certain specified provisions²¹ requiring the publication of any notice or other matter²²; or (iv) in the exercise of any power or the performance of any duty which is conferred or imposed on any person apart from the Coal Industry Act 1994²³.

The Secretary of State may by order modify these provisions²⁴ so as to add to or restrict the descriptions of disclosures which are to be excluded from any prohibition contained in these arrangements²⁵.

Where any licence²⁶ or any undertaking given by the Authority to an applicant²⁷ contains provision for any information furnished to the Authority to be treated as subject to such an obligation of confidence as restricts the disclosure or use of that information without the consent of the person to whom that obligation is to be owed, special provision applies²⁸. In such a case, the requirement to comply with that obligation is a duty owed by the Authority to that person²⁹, and any such disclosure or use, in contravention³⁰ of that provision, of any information as causes the person to whom it is owed to sustain loss or damage is actionable against the Authority at the suit or instance of that person³¹.

1 As to the Coal Authority see PARA 52 et seq ante.

- 2 As to restructuring schemes see PARA 73 ante.
- 3 As to the meaning of 'records' see PARA 109 note 4 ante (definition applied by the Coal Industry Act 1994 s 59(9)).
- 4 As to the meaning of 'business' see PARA 72 note 12 ante.
- 5 Coal Industry Act 1994 s 59(1).
- 6 As to the Secretary of State see PARA 4 ante.
- 7 Coal Industry Act 1994 s 59(2)(a). As the extension of disclosure powers see the Anti-terrorism, Crime and Security Act 2001 s 17, Sch 4 Pt 1 para 35; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 395.
- 8 Coal Industry Act 1994 s 59(2)(b). The public access arrangements referred to in the text are those made under s 57 (as amended): see PARA 109 ante.
- 9 For the purposes of *ibid* s 59 (as amended), every Minister of the Crown and local weights and measures authority in Great Britain is a relevant authority in relation to his or, as the case may be, its functions under any relevant enactment: s 59(3)(a). For the meaning of 'Great Britain' see PARA 1 note 1 ante. As to weights and measures authorities see WEIGHTS AND MEASURES vol 50 (2005 Reissue) PARA 20. The Secretary of State, the Treasury and the Financial Services Authority are relevant authorities in relation to their functions under the Financial Services and Markets Act 2000 and the enactments relating to companies and insolvency: Coal Industry Act 1994 s 59(3)(b) (substituted by the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2002, SI 2002/1555, art 23). An inspector appointed under the enactments relating to companies, an official receiver and any recognised professional body for the purposes of the Insolvency Act 1986 s 391 are relevant authorities in relation to their functions as such: Coal Industry Act 1994 s 59(3)(c). Every enforcing authority, within the meaning of the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended), is a relevant authority in relation to its functions under any relevant statutory provision, within the meaning of that Act: Coal Industry Act 1994 s 59(3)(d). The Civil Aviation Authority is a relevant authority in relation to its functions under the Transport Act 2000 Pt I (ss 1-107): Coal Industry Act 1994 s 59(3)(dd) (added by the Transport Act 2000 (Consequential Amendments) Order 2002, SI 2001/4050, art 2, Sch Pt IV para 24). The following are relevant authorities in relation to all of their functions: (1) the Comptroller and Auditor General (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726; PARLIAMENT vol 78 (2010) PARA 945); (2) the Health and Safety Executive and the Health and Safety Commission (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361 et seq, 367 respectively.); (3) the Environment Agency (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq); (4) the Competition Commission (see COMPETITION vol 18 (2009) PARA 9 et seq); (5) the Office of Fair Trading (see COMPETITION vol 18 (2009) PARA 6 et seq) and the Gas and Electricity Markets Authority (see FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 708 et seq); (6) the Scottish Environment Protection Agency (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68); Coal Industry Act 1994 s 59(3)(e)(i)-(vi) (amended by the Utilities Act 2000 s 3(2); the Environment Act 2002 s 278(1), Sch 24, PARAS 2-6; the Environment Act 1995 (Consequential and Transitional Provisions) (Scotland) Regulations 1996, SI 1996/973, reg 2, Schedule para 16; and the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 34).
- 10 Coal Industry Act 1994 s 59(2)(c).
- 11 *Ibid* s 59(2)(d).
- 12 'Relevant enactment' means any of the following: (1) the Trade Descriptions Act 1968; (2) the Fair Trading Act 1973; (3) the Consumer Credit Act 1974; (4) the Control of Pollution Act 1974 Pt II (s 44 as amended); (5) the Estate Agents Act 1979; (6) the Competition Act 1980; (7) the Consumer Protection Act 1987; (8) the Electricity Act 1989; (9) the Water Resources Act 1991; (10) the Land Drainage Act 1991; (11) any subordinate legislation made for the purpose of securing compliance with EC Council Directive 84/450 (OJ L250, 19.9.84, p 17) on the approximation of the laws, regulations and administrative provisions of the member states concerning misleading advertising; (12) the Competition Act 1998; (13) the Enterprise Act 2002: Coal Industry Act 1994 s 59(4)(a)-(o) (amended by the Competition Act 1998, s 74(1), (3), Sch 12 para 18(a), (b), Sch 14 Pt I; and the Enterprise Act 2002 s 278(1), Sch 25 para 32(1), (2)(b)).
- 13 As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.
- 14 See eg the Coal Mining Subsidence (Arbitration Schemes) Regulations 1994, SI 1994/2566, made under the Coal Industry Act 1994 s 47(2); and PARA 252 post.
- 15 *Ibid* s 59(2)(e).

- 16 Ibid s 59(2)(f). 'Community obligation' means such an obligation within the meaning of the European Communities Act 1972: see the Interpretation Act 1978 s 5, Sch 1.
- 17 Ie under the Coal Industry Act 1994 s 60 (see PARA b ante): see s 59(5)(a).
- 18 Ibid s 59(5)(a). The report on the operation of the Coal Mining Subsidence Act 1991 is made under s 49 (as amended) (see PARA 255 post): see the Coal Industry Act 1994 s 59(5)(a).
- 19 Ibid s 59(5)(b)(i).
- 20 Ibid s 59(5)(b)(ii). The public access arrangements referred to in the text are those made under s 57 (as amended): see PARA 109 ante.
- 21 Ie any provision of ibid s 31 (see PARA 101 ante) or s 32 (see PARAS 102-103 ante) or Pt III (ss 37-56) (as amended) (see PARA 107 et seq ante): see s 59(5)(b)(iii).
- 22 Ibid s 59(5)(b)(iii).
- 23 Ibid s 59(5)(b)(iv).
- 24 Ie ibid s 59(2)-(5) (s 59(3), (4) as amended): see s 59(6).
- 25 Ibid s 59(6). The power to make such an order is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 59(6).
- 26 Ie under ibid Pt II: see s 59(7).
- 27 Ie under ibid s 57(4)(b) (see PARA 109 ante): see s 59(7).
- 28 See ibid s 59(7). Section 59(7) does not apply, except in so far as the provisions of the licence or undertaking contain express provision to the contrary, to any disclosure of information which is for the time being excluded by virtue of s 59(2)-(5) (as amended) from the prohibition contained in arrangements under s 59(1): s 59(8).
- 29 Ibid s 59(7)(a).
- 30 As to the meaning of 'contravention' see PARA 56 note 7 ante.
- 31 Coal Industry Act 1994 s 59(7)(b).

UPDATE

110 Information to be kept confidential by the Coal Authority

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 9--Coal Industry Act 1994 s 59(3)(e)(ii) amended: SI 2008/960. The Health and Safety Commission was abolished as from 1 April 2008: see the Legislative Reform (Health and Safety Executive) Order 2008, SI 2008/960, art 2.

NOTE 12--Coal Industry Act 1994 s 59(4) amended: SI 2008/960.

TEXT AND NOTE 13, 15--Reference to the Lands Tribunal is now to the Upper Tribunal: Coal Industry Act 1991 s 59(2)(e) (amended by SI 2009/1307).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/3. REORGANISATION OF THE COAL INDUSTRY/ (6) SUPPLEMENTAL PROVISIONS/111. Financial provisions.

(6) SUPPLEMENTAL PROVISIONS

111. Financial provisions.

The following sums are to be paid out of money provided by Parliament:

- 83 (1) any administrative expenses incurred by the Secretary of State¹ or the Treasury in consequence of the provisions of the Coal Industry Act 1994²;
- 84 (2) any sums required by any Minister of the Crown or government department for meeting obligations arising in consequence of that Minister or department becoming entitled or subject, in accordance with any restructuring scheme³, to any property, rights or liabilities⁴; and
- 85 (3) any increase attributable to the Coal Industry Act 1994 in the sums payable out of money so provided under any other Act⁵.

1 As to the Secretary of State see PARA 4 ante.

2 Coal Industry Act 1994 s 62(a).

3 As to restructuring schemes see PARA 73 ante.

4 Coal Industry Act 1994 s 62(b).

5 Ibid s 62(c).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/3. REORGANISATION OF THE COAL INDUSTRY/ (6) SUPPLEMENTAL PROVISIONS/112. Service of documents.

112. Service of documents.

Any document (except a document in relation to the service of which provision is made by rules of court¹) required or authorised by virtue of the Coal Industry Act 1994 to be served² on any person may be served (1) by delivering it to him or by leaving it at his proper address³ or by sending it by post to him at that address; (2) if the person is a body corporate, by serving it in accordance with head (1) above on the secretary or clerk of that body; or (3) if the person is a partnership, by serving it in accordance with head (1) above on a partner or a person having the control or management of the partnership business; and any document required or authorised to be served on the Coal Authority⁴ or the British Coal Corporation⁵ may be served by leaving it at, or sending it by post to, any office of the Authority or, as the case may be, of the Corporation⁶.

1 Coal Industry Act 1994 s 63(5).

2 References in *ibid* s 63 to the service of a document on any person include references to the giving, making or sending to that person of any notice, direction, claim or request which is in writing: s 63(4). As to the service of documents generally see *CIVIL PROCEDURE*. See also *COMPANIES* vol 14 (2009) PARA 671.

3 For the purposes of *ibid* s 63 and the Interpretation Act 1978 s 7 (which relates to the service of documents by post) in its application to the Coal Industry Act 1994 s 63, the proper address of any person on whom a document is to be served is his last known address, except that (1) in the case of service on a body corporate or its secretary or clerk, it is the address of the registered or principal office of the body; and (2) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it is the address of the principal office of the partnership; and for these purposes the principal office of a company registered outside the United Kingdom, or of a partnership carrying on business outside the United Kingdom, is its principal office within the United Kingdom: s 63(2). If a person to be served with any document by another has specified to that other an address within the United Kingdom, other than his proper address, as one at which he or someone on his behalf will accept documents of the same description as that document, that address must also be treated as a proper address of that person for these purposes and for the purposes of the Interpretation Act 1978 s 7 in its application to the Coal Industry Act 1994 s 63: s 63(3). For the meaning of 'United Kingdom' see PARA 1 note 1 ante.

4 As to the Coal Authority see PARA 52 et seq ante. As to the principal office of the Coal Authority see PARA 52 note 1 ante.

5 As to the British Coal Corporation see PARAS 2-3 ante.

6 Coal Industry Act 1994 s 63(1).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/3. REORGANISATION OF THE COAL INDUSTRY/ (6) SUPPLEMENTAL PROVISIONS/113. Offences by bodies corporate.

113. Offences by bodies corporate.

Where a body corporate is guilty of an offence under the Coal Industry Act 1994 and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, then he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly¹. Where the affairs of a body corporate are managed by its members this provision applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate².

1 Coal Industry Act 1994 s 64(1). As to the liability of companies for crimes and offences see COMPANIES vol 14 (2009) PARAS 311-316.

2 Ibid s 64(2).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/3. REORGANISATION OF THE COAL INDUSTRY/ (6) SUPPLEMENTAL PROVISIONS/114. Crown application.

114. Crown application.

The Coal Industry Act 1994 has effect in relation to any land or other property in which there is a Crown or Duchy interest¹ as it has effect in relation to land or other property in which there is no such interest². So much of the Act as contains provision for the modification of the rights or liabilities to which any person is or may become entitled or subject also binds the Crown³.

1 'Crown or Duchy interest' means any interest belonging to Her Majesty or to the Duchy of Cornwall or any interest belonging to a government department or held in trust for the purposes of a government department: Coal Industry Act 1994 s 66(5). As to the meaning of 'interest' see PARA 52 note 2 ante. As to Crown lands generally see CROWN PROPERTY.

2 Ibid s 66(1).

3 Ibid s 66(2). Where the Act modifies any enactment in relation to which provision is made for its application to the Crown that differs from s 66, that provision and not s 66, has effect in relation to the modification: s 66(4).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/3. REORGANISATION OF THE COAL INDUSTRY/ (6) SUPPLEMENTAL PROVISIONS/115. Procedures for awarding supply and works contracts.

115. Procedures for awarding supply and works contracts.

Member states of the European Community are required to co-ordinate procedures for the award of supply and works contracts by certain entities operating in the water, energy, transport and telecommunications sectors¹. In the United Kingdom² the Utilities Contracts Regulations 1996³ apply whenever certain utilities seek offers in relation to proposed supply contracts or proposed works contracts which are not specifically excluded⁴. For the purposes of those regulations, a licensed operator within the meaning of the Coal Industry Act 1994⁵ is a utility in relation to the exploitation of a geographical area for the purposes of exploring for or extracting coal or other solid fuel⁶.

Where the Utilities Contracts Regulations 1996 apply, requirements are prescribed in respect of technical specifications⁷, the open, restricted and negotiated procedures leading to the award of a contract⁸, the qualification and selection of providers⁹, the award of the contract¹⁰, employment protection, working conditions and sub-contracting¹¹, information, reports and notices¹² and enforcement¹³.

1 See EC Council Directive 92/13 (OJ L76, 23.3.92, p 14); EC Council Directive 93/38 (OJ L199, 9.8.93, p 84); and FUEL AND ENERGY vol 19(1) (2007 Reissue) PARAS 643-651.

2 For the meaning of 'United Kingdom' see PARA 1 note 1 ante.

3 Ie the Utilities Contracts Regulations 1996, SI 1996/2911 (amended by SI 2001/2418)), which came into force on 12 December 1996: see Utilities Contracts Regulations 1996, SI 1996/2911, reg 1. These regulations implement the directives cited in note 1 supra.

4 See *ibid* regs 4-10 (as amended).

5 For the meaning of 'licensed operator' see PARA 60 note 12 ante.

6 See the Utilities Contracts Regulations 1996, SI 1996/2911, reg 3, Sch 1 Pt N (Sch 1 substituted by SI 2001/2418).

7 See *ibid* Pt II (reg 12).

8 See *ibid* Pt III (regs 13-17) (amended by SI 2001/2418; SI 2003/46).

9 See the Utilities Contracts Regulations 1996, SI 1996/2911, Pt IV (regs 18-20).

10 See *ibid* Pt V (regs 21-23A) (amended by SI 2003/46; SI 2001/2418).

11 See the Utilities Contracts Regulations 1996, SI 1996/2911, regs 24, 25.

12 See *ibid* regs 26-31A (regs 27, 31 amended by SI 2001/2418; SI 2003/46; and the Utilities Contracts Regulations 1996, SI 1996/2911, reg 31A added by SI 2001/2418).

13 See the Utilities Contracts Regulations 1996, SI 1996/2911, regs 32-33.

UPDATE

115 Procedures for awarding supply and works contracts

TEXT AND NOTES--SI 1996/2911 replaced: Utilities Contracts Regulations 2006, SI 2006/6 (implementing EC Parliament and Council Directive 2004/17 co-ordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors).

NOTE 4--Now SI 2006/6 regs 4-11 (reg 6 amended by SI 2008/2848; SI 2006/6 regs 7, 11 amended by SI 2007/3542).

NOTE 6--SI 1996/2911 reg 3, Sch 1 Pt N now SI 2006/6 reg 3, Sch 1 Pt N.

NOTE 7--Now SI 2006/6 Pt 2 (regs 12, 13).

NOTE 8--SI 1996/2911 Pt III now SI 2006/6 Pt 3 (regs 14-22) (reg 15 amended by SI 2007/3542).

NOTE 9--Now SI 2006/6 Pt 4 (regs 23-29) (reg 26 amended by SI 2007/2157).

NOTE 10--SI 1996/2911 Pt V now SI 2006/6 Pt 2 (regs 30-33).

NOTE 11--Now SI 2006/6 regs 35, 43.

NOTE 12--SI 1996/2911 regs 26-31A now SI 2006/6 regs 34, 36-42, 44 (reg 34 amended by SI 2007/3542; SI 2006/6 reg 38 amended by SI 2008/2256).

NOTE 13--Now SI 2006/6 regs 45, 46.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(1) RIGHT OF SUPPORT/(i) Natural Right of Support/116. General principles.

4. RIGHTS AFFECTING MINES IN GENERAL

(1) RIGHT OF SUPPORT

(i) Natural Right of Support

116. General principles.

At common law, where there has been severance of title and the surface and minerals are in different hands¹, ownership of the surface land carries prima facie a natural right of support which is a right to have the surface kept in its natural position and condition². The right is not an easement but a natural right incident to the ownership of the soil³.

There is no natural right of support for anything artificially constructed on land; such a right cannot exist *ex jure naturae* because the thing itself did not do so⁴. Thus any right to the support of such an artificial burden must be acquired as an easement⁵.

Rights and obligations in regard to support may be varied by the instrument of severance of the surface and minerals⁶ or by a separate instrument⁷. They may also be modified by custom⁸.

In many circumstances the application of the common law principles is subject to statutory provisions⁹. By the effect of such provisions, or of subordinate instruments¹⁰, rights and obligations in regard to support may be created¹¹, overridden¹² or varied¹³, or new remedies may be established where the withdrawal of support has caused subsidence damage¹⁴.

1 See PARA 21 ante. For the meaning of 'minerals' see PARA 12 ante.

2 *Humphries v Brogden* (1850) 12 QB 739; *Bonomi v Backhouse* (1859) EB & E 646, Ex Ch (affd (1861) 9 HL Cas 503); *Butterknowle Colliery Co Ltd v Bishop Auckland Industrial Co-operative Co Ltd* [1906] AC 305, HL. At the time when the principle was laid down it appears to have been assumed that minerals could always be worked commercially, to some extent, without letting down the surface, so that it may have seemed reasonable to infer an intention at the time of severance that they could be worked to that extent but no further: see *Warwickshire Coal Co Ltd v Coventry Corp* [1934] Ch 488 at 508, CA, per Romer LJ. More recently the assumption has not been accepted: see eg *Welldon v Butterley Co Ltd* [1920] 1 Ch 130 at 141 per Astbury J (overruled on another point by *Warwickshire Coal Co Ltd v Coventry Corp* supra); and see *Butterley Co Ltd v New Hucknall Colliery Co Ltd* [1909] 1 Ch 37 at 46, 47, CA, per Cozens-Hardy MR (affd [1910] AC 381, HL). Nevertheless whatever the reason of the principle, there is no doubt that it continues to exist: *Warwickshire Coal Co Ltd v Coventry Corp* supra at 508 per Romer LJ. See also *Thomson v St Catharine's College, Cambridge* [1919] AC 468, HL; and PARA 199 post.

3 As to easements of support see EASEMENTS AND PROFITS A PRENDRE.

4 *Wilde v Minsterley* (1639) 2 Roll Abr 564, Trespass (I); *Partridge v Scott* (1838) 3 M & W 220; *Dalton v Angus & Co* (1881) 6 App Cas 740 at 792, HL, per Lord Selborne LC; and see EASEMENTS AND PROFITS A PRENDRE.

5 *Dalton v Angus & Co* (1881) 6 App Cas 740 at 792, HL, per Lord Selborne LC. See also PARA 123 et seq post and, as to easements of support generally, EASEMENTS AND PROFITS A PRENDRE. As to subsidence damage see PARA 184 et seq post.

6 See *Rowbotham v Wilson* (1860) 8 HL Cas 348 (overruling the dictum of Lord Denham CJ in *Hilton v Earl Granville* (1844) 5 QB 701 at 730); and see *Bell v Love* (1833) 10 QBD 547 at 561, CA, per Baggallay LJ (on appeal (1884) 9 App Cas 286 at 293, HL, per Lord Selborne LC); *Davies v Powell Duffryn Steam Coal Co Ltd (No 2)* (1921) 91 LJ Ch 40, CA; *Harris v Ryding* (1839) 5 M & W 60; *Humphries v Brogden* (1850) 12 QB 739 at 757. See also PARAS 118, 129 post.

7 *Rowbotham v Wilson* (1856) 6 E & B 593 at 604 (affd (1857) 8 E & B 123 Ex Ch, (1860) 8 HL Cas 348); *Murchie v Black* (1865) 19 CBNS 190 at 205 per Erle CJ; cf *Richards v Harper* (1866) LR 1 Exch 199 at 205 per Martin B; *Sitwell v Earl of Londesborough* [1905] 1 Ch 460. See also PARA 129 post.

8 See PARA 136 post.

9 Such provisions are found both in statutes of general application (see notes 11-14 infra) and in local statutes, eg the Inclosure Acts (see PARA 129 post).

10 Eg compulsory purchase orders providing for the incorporation of the mining code of the Acquisition of Land Act 1981: see PARA 137 post.

11 See eg the Coal Industry Act 1994 ss 38-41; and PARA 178 et seq post.

12 See eg the Mines (Working Facilities and Support) Act 1966 s 2(1)(a) (as amended); and PARA 387 post.

13 See eg *ibid* s 7 (as amended); and PARA 390 post.

14 See the Coal Mining Subsidence Act 1991; and PARA 202 et seq post. The form of the Interaction Framework Agreement between the Coal Authority and operators who acquire a right to enter, extract or otherwise affect coal contains requirements as to notifications to be given and consents to be obtained where an operator intends to carry on operations which cause or may cause subsidence damage affecting other parties to the Agreement. As to the Interaction Framework Agreement see PARA 96 note 20 ante. As to the Coal Authority see PARA 52 et seq ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(1) RIGHT OF SUPPORT/(i) Natural Right of Support/117. Rights of support from subjacent mines.

117. Rights of support from subjacent mines.

The principles which apply in respect of support from subjacent mines¹ which are severed in ownership from the surface² are similar³ to those which regulate the mutual rights and liabilities of the owners of adjacent closes⁴ in respect of lateral support⁵. They apply also to the support of an underground stratum by a deeper stratum⁶ and to the support of surface land from mines under adjacent land⁷.

1 As to lateral support from mines see *Whitehouse v Bayley* (1875) 34 LT 93; and see also *New Moss Colliery Ltd v Manchester Corpn* [1908] AC 117 at 122, HL, per Lord Loreburn LC; *Thomson v St Catharine's College, Cambridge* [1919] AC 468 at 502, HL, per Lord Sumner. For the meaning of 'mine' see PARA 5 ante.

2 See PARA 116 ante. As to the persons who must provide support see PARA 120 post.

3 *Humphries v Brogden* (1850) 12 QB 739 at 744; *Pountney v Clayton* (1883) 11 QBD 820 at 839, CA, per Bowen LJ. For the statutory right of licensees of the Coal Authority to withdraw support to enable coal to be worked see the Coal Industry Act 1994 ss 38-41; and PARA 178 et seq post. As to the Coal Authority see PARA 52 et seq ante.

4 As to the meaning of 'close' see PARA 19 ante.

5 As to the rights of adjoining owners of land to support, and as to the right of support for buildings see EASEMENTS AND PROFITS A PRENDRE. As to the right of support in the case of walls see BOUNDARIES vol 4(1) (2002 Reissue) PARA 973 et seq. See also Roll Abr 564, Trespass (I); Corn Dig, Action upon the Case for a Nuisance (A); *Hunt v Peake* (1860) John 705; *Humphries v Brogden* (1850) 12 QB 739; *Caledonian Rly Co v Sprot (of Garnkirk)* (1856) 2 Macq 449 at 450, HL, per Lord Cranworth LC; *North Eastern Rly Co v Elliot* (1860) 1 John & H 145 at 153 per Page Wood V-C (affd 2 De GF & J 423); *Backhouse v Bonomi* (1861) 9 HL Cas 503 at 512, 513 per Lord Cranworth; *Dalton v Angus & Co* (1881) 6 App Cas 740, HL; *Manchester Corpn v New Moss Colliery Ltd* [1906] 1 Ch 278 at 295 per Farwell J (revsd on other points [1906] 2 Ch 564, CA; and [1908] AC 117, HL).

6 See *Dixon v White* (1883) 8 App Cas 833 at 842, HL, per Lord Blackburn; *Butterley Co Ltd v New Hucknall Colliery Co Ltd* [1909] 1 Ch 37 at 48, CA, per Cozens-Hardy MR (affd [1910] AC 381 at 386, HL, per Lord Macnaghten); cf [1908] 2 Ch 475 at 483 per Neville J; *Mundy v Duke of Rutland* (1883) 23 ChD 81, CA; and see PARA 116 ante; and EASEMENTS AND PROFITS A PRENDRE.

7 *London and North Western Rly Co v Howley Park Coal and Cannel Co* [1911] 2 Ch 97, CA; affd [1913] AC 11, HL.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(1) RIGHT OF SUPPORT/(i) Natural Right of Support/118. Nature of the right of support.

118. Nature of the right of support.

The right of support arises on the severance¹ of the surface and the minerals². Thus the landowner may, on severance, by apt words convey the minerals with the right to let down the surface in working them, or he may by means of exceptions and reservations of minerals and powers of working them grant the surface so that the right of support does not arise at all. In the latter case, there is no necessity for a regrant by the grantee of the surface of the right to let down the surface³.

The right of support is independent of the nature of the strata⁴, or the difficulty of propping up the surface, or the comparative values of the surface and the minerals⁵. It is impossible to measure out degrees to which the right may extend. Accordingly, the surface owner's right is not modified by the fact that the obligation not to cause damage by subsidence renders the effectual working of the underlying minerals impossible, as where the extent of pillars necessary to maintain the surface undamaged is such as to make the remaining minerals unprofitable to work⁶. Similarly there is no modification of the surface owner's right where the supported tenement contains strata of an unstable nature which shift or escape and cause subsidence if the adjoining owner excavates on his land⁷.

1 See PARA 21 ante.

2 See *Pountney v Clayton* (1883) 11 QBD 820 at 838, CA, per Bowen LJ. For the meaning of 'minerals' see PARA 12 ante.

3 *Davies v Powell Duffryn Steam Coal Co Ltd (No 2)* (1921) 91 LJ Ch 40, CA. It follows that the owner of the soil and minerals may grant the minerals and retain the right of support, or grant the surface with an express or implied right of support: see PARAS 129-130 post.

4 *Humphries v Brogden* (1850) 12 QB 739; *Rowbotham v Wilson* (1856) 6 E & B 593 at 601; affd on appeal (1857) 8 E & B 123, Ex Ch; (1860) 8 HL Cas 348; and see note 7 infra.

5 *Humphries v Brogden* (1850) 12 QB 739.

6 *Wakefield v Duke of Buccleuch* (1867) LR 4 Eq 613 at 628, 638 per Malins V-C (affd sub nom *Duke of Buccleuch v Wakefield* (1870) LR 4 HL 377); *New Sharlston Collieries Co Ltd v Earl of Westmorland* (1900) [1904] 2 Ch 443n, HL.

7 See *Trinidad Asphalt Co v Ambard* [1899] AC 594 at 602, PC (fluid pitch); *Jordeson v Sutton, Southcoates and Drypool Gas Co* [1899] 2 Ch 217, CA; *Fletcher v Birkenhead Corp* [1906] 1 KB 605 (affd [1907] 1 KB 205, CA (running silt)); *Salt Union Ltd v Brunner, Mond & Co* [1906] 2 KB 822 (brine pumped to surface); cf *Langbrook Properties Ltd v Surrey County Council* [1969] 3 All ER 1424, [1970] 1 WLR 161 (water).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(1) RIGHT OF SUPPORT/(i) Natural Right of Support/119. Limits to the natural right of support.

119. Limits to the natural right of support.

The natural right of support is not an interest in the subjacent mines¹ sufficient to entitle the surface owner to insist upon the minerals remaining unworked². The owner of the minerals is entitled as an incident to the enjoyment of his property to get his minerals in a usual and proper course of working consistent with leaving support³; the minerals may be worked out completely provided adequate artificial support is substituted⁴.

¹ For the meaning of 'mine' see PARA 5 ante.

² See *Bonomi v Backhouse* (1859) EB & E 646 at 655, Ex Ch; affd (1861) 9 HL Cas 503; *Dalton v Angus & Co* (1881) 6 App Cas 740 at 808, HL, per Lord Blackburn. As to the right to work minerals under the uninclosed waste of a manor see COMMONS vol 13 (2009) PARA 560. For the meaning of 'minerals' see PARA 12 ante.

³ *Rowbotham v Wilson* (1860) 8 HL Cas 348 at 360 per Lord Wensleydale; *Butterknowle Colliery Co Ltd v Bishop Auckland Industrial Co-operative Co Ltd* [1906] AC 305, HL; but see PARA 116 note 2 ante. As to liability in respect of subsidence caused by coal mining see PARA 202 et seq post; and as to liability in respect of subsidence caused by other mining operations see PARA 184 et seq post.

⁴ *Harris v Ryding* (1839) 5 M & W 60 at 74, 76; *Humphries v Brogden* (1850) 12 QB 739 at 744; *Rowbotham v Wilson* (1857) 8 E & B 123 at 157, Ex Ch (on appeal (1860) 8 HL Cas 348); *Backhouse v Bonomi* (1861) 9 HL Cas 503. See also PARA 116 note 2 ante; and EASEMENTS AND PROFITS A PRENDRE.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(1) RIGHT OF SUPPORT/(i) Natural Right of Support/120. Persons who must afford support.

120. Persons who must afford support.

The land which is affected by the obligation to afford support is not limited to the land of the immediately adjoining owner if that land in its natural condition is insufficient of itself to afford the proper support. Therefore, all persons whose land in its natural state affords support are, for the purposes of support, adjoining owners or neighbours of the person whose land enjoys the support¹. But if an adjoining piece of land which affords support is excavated, no right of support is automatically acquired against a more distant piece of land which in fact affords support in the altered circumstances².

1 *Birmingham Corp'n v Allen* (1877) 6 ChD 284, CA.

2 *Birmingham Corp'n v Allen* (1877) 6 ChD 284, CA; *Darley Main Colliery Co v Mitchell* (1886) 11 App Cas 127, HL; and see *Williams v Bagnall* (1866) 15 WR 272 at 276 per Page Wood V-C.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(1) RIGHT OF SUPPORT/(i) Natural Right of Support/121. Manner of severance immaterial.

121. Manner of severance immaterial.

The presumption that the surface owner is entitled to support from underlying minerals in different ownership does not depend on the manner of severance¹. It applies whether the surface and minerals have been severed by a grant of mines and minerals apart from the land², or by a grant of the land with an exception of the mines and minerals³. The form of the instrument of severance is also immaterial; it may be a grant in fee simple⁴, or a lease for a term of years⁵ or it may be an Inclosure Act or award⁶.

1 See PARAS 116-118 ante. For the meaning of 'minerals' see PARA 12 ante.

2 *Dugdale v Robertson* (1857) 3 K & J 695; *Davis v Treharne* (1881) 6 App Cas 460, HL; *Pountney v Clayton* (1883) 11 QBD 820 at 838, CA, per Bowen LJ. As to the meaning of 'mines and minerals' see PARA 12 ante.

3 *Harris v Ryding* (1839) 5 M & W 60; *Smart v Morton* (1855) 5 E & B 30 at 46 per Lord Campbell CJ; *Roberts v Haines* (1856) 6 E & B 643 at 654 per Coleridge J, and at 655 per Erle J (affd (1857) 7 E & B 625, Ex Ch); *Caledonian Rly Co v Sprot (of Garnkirk)* (1856) 2 Macq 449 at 451, HL, per Lord Cranworth LC; *Westhoughton UDC v Wigan Coal and Iron Co Ltd* [1919] 1 Ch 159, CA; *Warwickshire Coal Co Ltd v Coventry Corp* [1934] Ch 488, CA; *Wath-upon-Deane UDC v John Brown & Co Ltd* [1936] Ch 172.

4 *Harris v Ryding* (1839) 5 M & W 60; *Dixon v White* (1883) 8 App Cas 833, HL.

5 *Dugdale v Robertson* (1857) 3 K & J 695; *Davis v Treharne* (1881) 6 App Cas 460, HL.

6 *Roberts v Haines* (1856) 6 E & B 643; affd (1857) 7 E & B 625, Ex Ch.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(1) RIGHT OF SUPPORT/(i) Natural Right of Support/122. Onus of proving a right of support.

122. Onus of proving a right of support.

It is not necessary in pleading to allege, or in evidence to prove, any special origin for the natural right of support; the onus both in pleading and in proof is on those who deny the existence of the right in the particular case¹. In the case of an easement of support², on the other hand, the acquisition of the right must be proved; but it is sufficient in pleading for the party claiming the right to allege that he is entitled to it; it is not necessary to allege facts from which a title to such right can be inferred as a matter of law³. This rule applies as against a defendant entitled to work the minerals⁴; as against a wrongdoer no allegation of right is necessary: de facto enjoyment of support is sufficient to maintain an action⁵.

1 *Humphries v Brogden* (1850) 12 QB 739 at 742; *Dalton v Angus & Co* (1881) 6 App Cas 740 at 809, HL, per Lord Blackburn.

2 As to easements of support see PARA 123 et seq post; and EASEMENTS AND PROFITS A PRENDRE.

3 *Rogers v Taylor* (1858) 2 H & N 828; distinguishing *Hilton v Whitehead* (1848) 12 QB 734.

4 For the meaning of 'minerals' see PARA 12 ante.

5 *Jeffries v Williams* (1850) 5 Exch 792.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(1) RIGHT OF SUPPORT/(ii) Easement of Support/123. Support for artificial structures.

(ii) Easement of Support

123. Support for artificial structures.

An easement of support for an artificial structure¹ may be created by grant, express² deemed³ or implied⁴, by prescription⁵ or by statute⁶. But, although the natural and acquired rights thus differ in their origin, the acquired right is inseparable from, and, as between the parties concerned, is a mere enlargement of, the natural right⁷. Where a right of support for an artificial structure has been acquired by way of easement, the right does not extend so as to entitle the owner to increase the burden⁸.

1 See PARA 116 ante.

2 As to the creation of easements by express grant see PARA 125 post; and EASEMENTS AND PROFITS A PRENDRE.

3 As to the creation of easements by deemed express grant see PARA 126 post; and EASEMENTS AND PROFITS A PRENDRE.

4 As to the creation of easements by implied grant see PARAS 126-127 post; and EASEMENTS AND PROFITS A PRENDRE.

5 As to the creation of easements by prescription see PARA 128 post; and EASEMENTS AND PROFITS A PRENDRE.

6 As to the creation of easements by statute see EASEMENTS AND PROFITS A PRENDRE. As to the creation of easements of support under the statutory mining codes see PARA 137 et seq post. As to restrictions on working minerals required for support see PARAS 390-392 post.

7 *Bonomi v Backhouse* (1859) EB & E 646 at 654, 655, Ex Ch; affd (1861) 9 HL Cas 503; and see *Humphries v Brogden* (1850) 12 QB 739 at 742.

8 See *Murchie v Black* (1865) 19 CBNS 190; *Angus v Dalton & Co* (1878) 4 QBD 162, CA (affd sub nom *Dalton v Angus & Co* (1881) 6 App Cas 740, HL); cf *Great Western Rly Co v Cefn Cribbwr Brick Co* [1894] 2 Ch 157.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(1) RIGHT OF SUPPORT/(ii) Easement of Support/124. Statutory grant of support.

124. Statutory grant of support.

A right of support of artificial structures is frequently created by statute, as where statutory undertakers are empowered to construct and maintain works of public utility, such as railways and canals, on the lands of private owners. In such cases the grant of the right to the support of the works will be presumed unless the provisions of the statute negative the inference¹.

¹ See *Caledonian Rly Co v Sprot (of Garnkirk)* (1856) 2 Macq 449, HL; *Re Dudley Corpn and Earl of Dudley's Trustees* (1881) 8 QBD 86 at 93, CA, per Brett LJ; *Clippens Oil Co Ltd v Edinburgh and District Water Trustees* [1904] AC 64, HL; and see PARA 140 post; and EASEMENTS AND PROFITS A PRENDRE. As to restrictions on working minerals required for support see also PARAS 390-392 post. Examples of a statutory liability to provide support are afforded by the Underground Works (London) Act 1956 s 5; and the Post Office Works Act 1959 s 3 (as amended).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(1) RIGHT OF SUPPORT/(ii) Easement of Support/125. Express grant of support.

125. Express grant of support.

An easement of support for artificial structures may be the subject of an express grant or reservation. In the case of registered land, an express grant or reservation of such an easement must itself be registered even if the disposition in which it is made does not itself require to be registered¹. The same object is sometimes attained, in dispositions of minerals², by a covenant which binds the mineral owner or the lessee not to work a certain part or certain parts of a seam or vein, or by a covenant to leave specified pillars unworked for the support of buildings. Such a restriction differs from a right to support in that it prohibits the mineral owner or the lessee from working or getting the minerals within those areas or pillars, irrespective of whether those areas or pillars are more or less than adequate for the support of the buildings, and also irrespective of whether or not substituted support by shoring or propping or otherwise would suffice. Sometimes the requisite pillars are excepted from the disposition³.

A perpetual restriction upon the working of mines⁴ may be imposed by statute, as where the statute imposes the obligation upon a mine owner not to work or get certain mines or minerals, and confers upon the surface owner the correlative right to insist upon the observance of the obligation⁵.

1 In the case of dispositions made on or after 13 October 2003, the day appointed for the Land Registration Act 2003 to come into force: see the Land Registration Act 2002 (Commencement No 4) Order 2003, SI 2003/1725, art 2(1). Requirements for the compulsory registration of expressly granted easements are contained in the Land Registration Act 2002 ss 4, 27: see LAND REGISTRATION.

2 For the meaning of 'minerals' see PARA 12 ante.

3 See PARAS 328 et seq, 342 post.

4 For the meaning of 'mine' see PARA 5 ante.

5 Eg under the Railways Clauses Consolidation Act 1845 s 78 (as amended); and the Acquisition of Land Act 1981 s 3, Sch 2 para 3(3): see PARA 156 post. It is not possible to create such a perpetual restriction by a common law grant; such a grant would not bind the land in the hands of successive owners. Apart from statute, such a restriction can only be created by a covenant not to work the mines, which may be enforced in equity against successive owners as a restrictive covenant: see *Great Northern Ry Co v IRC* [1901] 1 KB 416 at 428, CA, per Collins LJ, and at 428-429 per Stirling LJ; cf *Leech v Schweder* (1874) 9 Ch App 463 at 475 per Mellish LJ. Such a restrictive covenant will only be enforceable against subsequent owners if appropriately registered against the burdened land: see EASEMENTS AND PROFITS A PRENDRE.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(1) RIGHT OF SUPPORT/(ii) Easement of Support/126. Implied grant of support.

126. Implied grant of support.

An easement of support for artificial structures may be the subject of an implied or deemed¹ grant if and to the extent that a contrary intention is not expressed in the relevant disposition. It differs from a restriction imposed on the working of mines² in that it does not prohibit working within any area; the mine owner, as in the case of a natural right, is free to work, provided he substitutes efficient artificial support³. If the common owner of the land and the subjacent mines transfers the land to another, but at the same time retains his ownership of the mines, and, if at the time of the transfer, there are buildings on the land transferred, there will be implied, and deemed to be, a grant of an easement of support for the buildings from the subjacent mines, in the absence of any contrary intention expressed in the transfer⁴. No such implied or deemed easement would arise, however, if the common owner transferred the mines to another, retaining his ownership of the land and buildings; in such a case the easement would have to be expressly reserved in favour of the land and buildings retained⁵. Moreover, if the surface of the land is transferred with a view to building on it, or for any other specified use, which may render increased support necessary, there is implied a grant of support from the grantor's subjacent mines and adjoining land to the extent reasonably necessary for the use of the land for the purposes within the parties' contemplation at the date of the transfer⁶. Thus where land is acquired for constructing and maintaining a railway there is implied, in the absence of any provision to the contrary, a grant of such support as may be proper and necessary for the railway, however, the railway may be used and whatever the purposes to which it may be applied⁷.

An implied easement of support may arise even if the purpose for which the land is transferred should be expressed in the instrument of severance⁸. To ascertain the parties' common intention, evidence is therefore admissible to show the use which, to the knowledge of both parties, the person acquiring the land intended to make of it, and of the impossibility of making that use of the land, without the right claimed as arising by implication⁹. If both parties to a transfer of land (where the transferor retains ownership of the subjacent mines) contemplated that the land would in the future be subjected to an artificial burden, it is a legitimate inference that support for such a burden was intended to be granted, as where the surface of land is sold for development and the purchaser enters into restrictive covenants with the vendor in relation to that future development. In such a case an easement of support for that development is likely to be implied, and the vendor will be liable for any damage caused by the working of the subjacent mines retained in his ownership¹⁰.

1 Law of Property Act 1925 s 62(2).

2 For the meaning of 'mine' see PARA 5 ante.

3 *Dalton v Angus & Co* (1881) 6 App Cas 740 at 830, HL, per Lord Watson. See also PARAS 116 note 2 ante, 119 note 4 ante.

4 *Dalton v Angus & Co* (1881) 6 App Cas 740 at 792, HL, per Lord Selborne LC. See also *Richards v Jenkins* (1868) 17 WR 30.

5 *Union Lighterage Co v London Graving Dock Co* [1902] 2 Ch 557, CA; and see EASEMENTS AND PROFITS A PRENDRE.

6 *Caledonian Rly Co v Sprot (of Garnkirk)* (1856) 2 Macq 449, HL; *Dalton v Angus & Co* (1881) 6 App Cas 740 at 792, HL, per Lord Selborne LC.

7 *Caledonian Rly Co v Sprot (of Garnkirk)* (1856) 2 Macq 449, HL; *Great Western Rly Co v Cefn Cribbwr Brick Co* [1894] 2 Ch 157. The implication of a right of support does not, however, arise where the mining code of the Railways Clauses Consolidation Act 1845 applies as substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended), except as provided in the code or as specially agreed: Railways Clauses Consolidation Act 1845 s 85E (as added); and see PARA 176 post.

8 See *Siddons v Short* (1877) 2 CPD 572.

9 See, however, *Butterley Co Ltd v New Hucknall Colliery Co Ltd* [1909] 1 Ch 37 at 52, CA, per Farwell LJ; affd [1910] AC 381, HL.

10 *Berkley v Shafto* (1863) 15 CBNS 79.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(1) RIGHT OF SUPPORT/(ii) Easement of Support/127. Validity and extent of implied grant.

127. Validity and extent of implied grant.

The implied grant is valid only to the extent that the grantor is able to grant it, so that, in the case of subjacent support, the doctrine of implied grant is confined to the case of the person who is the owner of both surface and subjacent mines¹ at the time of the severance. If the surface owner has no right to support, or has it for the land in its natural state only, a purchaser of the surface does not by implication purchase also the right to support for any burden he may place on the surface². If, however, the surface owner is entitled to support for all purposes, he may transfer his right to a person who purchases the surface³; indeed, it will pass automatically to such a purchaser, unless a contrary intention is expressed.

The extent of the right to support arising by an implied grant created by statute on the purchase of surface land by statutory undertakers may, however, be much wider, so that the undertakers may acquire a right of support not merely against the vendor of the surface, but against owners of adjacent or subjacent land⁴.

1 For the meaning of 'mine' see PARA 5 ante.

2 *Pountney v Clayton* (1883) 11 QBD 820 at 840, 841, CA, per Bowen LJ.

3 *Pountney v Clayton* (1883) 11 QBD 820 at 840, CA, per Bowen LJ; *Consett Waterworks Co v Ritson* (1889) 22 QBD 318 at 326 per A L Smith J; on appeal 22 QBD 702, CA.

4 See PARA 139 post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(1) RIGHT OF SUPPORT/(ii) Easement of Support/128. Prescription.

128. Prescription.

Support for buildings may be acquired by prescription, either at common law or under statute¹, but the existence of any contract between the parties or a grant inconsistent with the claim prevents its acquisition; thus no right can be acquired if the surface owner is, by some instrument, expressly excluded from the natural right of support². Similar principles apply in the case of land weakened by excavation of the subjacent mines³; if the subjacent mines afford adequate support for buildings before excavation, no right is acquired by prescription against a lateral owner, if the prescription period⁴ has not elapsed since the excavation of the subjacent mines⁵; nor if the lateral owner was ignorant of the workings⁶. However, where buildings have been erected over partially excavated mines, a right is acquired after the prescription period against persons interested in the mines if, but for the working of the mines, the buildings would not have subsided⁷.

1 *Dalton v Angus & Co* (1881) 6 App Cas 740, HL; and see EASEMENTS AND PROFITS A PRENDRE.

2 See *Rowbotham v Wilson* (1856) 6 E & B 593 (affd (1857) 8 E & B 123, Ex Ch; (1860) 8 HL Cas 348).

3 For the meaning of 'mine' see PARA 5 ante.

4 See EASEMENTS AND PROFITS A PRENDRE.

5 *Partridge v Scott* (1838) 3 M & W 220.

6 *Woodall v Hingley* (1866) 14 LT 167.

7 *Richards v Jenkins* (1868) 17 WR 30. As to subsidence damage see PARA 184 et seq post. As to subsidence damage by coal mining see PARA 202 et seq post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(1) RIGHT OF SUPPORT/(iii) Modification of Rights/129. Variation of right to support.

(iii) Modification of Rights

129. Variation of right to support.

An instrument of severance¹ or other instrument² varying the prima facie rights and obligations of the surface owner and the mineral owner³ may do so in either affirmative terms or negative terms⁴, and by express words or by necessary implication⁵, whether the mines are granted with an exception of the surface or the surface is granted excepting the mines⁶, and whether the instrument is a voluntary contract between the parties concerned or an Inclosure Act⁷ or other statute⁸. A statute which does not itself provide for severance may nevertheless affect rights and obligations as to support⁹. Such rights and obligations may also be varied by custom¹⁰.

1 See PARA 116 text and note 6 ante.

2 See PARA 116 text and note 7 ante.

3 See PARA 116 ante. For the meaning of 'minerals' see PARA 12 ante.

4 See *Smith v Darby* (1872) LR 7 QB 716 at 724 per Blackburn J.

5 See *Smith v Darby* (1872) LR 7 QB 716 at 725 per Mellor J; *Aspden v Seddon* (1875) 10 Ch App 394; *Davis v Treharne* (1881) 6 App Cas 460, HL; *Dixon v White* (1883) 8 App Cas 833, HL; *New Sharlston Collieries Co Ltd v Earl of Westmorland* (1900) [1904] 2 Ch 443n, HL; *Butterknowle Colliery Co Ltd v Bishop Auckland Industrial Co-operative Co Ltd* [1906] AC 305, HL; *Butterley Co Ltd v New Hucknall Colliery Co Ltd* [1910] AC 381, HL.

6 *Dixon v White* (1883) 8 App Cas 833, HL; *Williams v Bagnall* (1866) 15 WR 272 at 275 per Page Wood V-C. See also PARA 21 ante. For the meaning of 'mine' see PARA 5 ante.

7 See *Duke of Buccleuch v Wakefield* (1870) LR 4 HL 377; *Bell v Love* (1883) 10 QBD 547 at 558, 560, CA, per Baggallay LJ (on appeal (1884) 9 App Cas 286 at 297, HL, per Lord Watson); *Consett Waterworks Co v Ritson* (1889) 22 QBD 702, CA; *Butterknowle Colliery Co Ltd v Bishop Auckland Industrial Co-operative Co Ltd* [1906] AC 305, HL.

8 Eg statutes incorporating the mining codes: see PARA 137 et seq post.

9 See eg the Mines (Working Facilities and Support) Act 1966 ss 1, 2, 7 (all as amended) (see PARA 383 et seq post); and the Coal Industry Act 1994 ss 38-41 (see PARA 178 et seq post).

10 See PARA 136 post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(1) RIGHT OF SUPPORT/(iii) Modification of Rights/130. Implied right to withdraw support.

130. Implied right to withdraw support.

The right to withdraw support may be conferred upon the mine owner by express words¹, but very frequently it arises by implication. Thus where the surface is transferred excepting the mines underneath, or the mines are transferred excepting the surface, it is a question of construction of the instrument of severance in each case whether by the express language of the transfer or exception, or by the general effect and intent of the instrument, there is a power to interfere with the support of the surface. The intention is to be gathered from the language of the instrument as a whole in the first instance², but evidence is admissible as to the circumstances in which the instrument was executed, including the facts known to the parties as to the practice of mining at the date of the instrument, in order to ascertain the sense in which the parties used the words employed by them to define their respective rights³. The burden of proof in all cases is on the party who claims that the common law right of support has been varied⁴.

1 See eg *Whitehouse v Bayley* (1875) 34 LT 93, where an express power to withdraw vertical support did not confer upon a mine owner, who also owned the lateral mines, a power to withdraw lateral support. For the meaning of 'mine' see PARA 5 ante.

2 For the general principles applicable to the interpretation of instruments see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 164 et seq.

3 See *Dixon v White* (1883) 8 App Cas 833, HL; *New Sharlston Collieries Co Ltd v Earl of Westmorland* (1900) [1904] 2 Ch 443n, HL; *Bishop Auckland Industrial Co-operative Society Ltd v Butterknowle Colliery Co Ltd* [1904] 2 Ch 419 at 435, CA, per Vaughan Williams LJ (affd sub nom *Butterknowle Colliery Co Ltd v Bishop Auckland Industrial Co-operative Co Ltd* [1906] AC 305, HL); *Butterley Co Ltd v New Hucknall Colliery Co Ltd* [1909] 1 Ch 37 at 46, CA, per Cozens-Hardy MR, at 49 per Fletcher Moulton LJ, and at 51, 52-55 per Farwell LJ (on appeal [1910] AC 381 at 386-388, HL, per Lord Macnaghten); *Jones v Consolidated Anthracite Collieries Ltd and Lord Dynevor* [1916] 1 KB 123. As to what evidence is admissible see further DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 198 et seq.

4 *Davis v Treharne* (1881) 6 App Cas 460 at 466-468, HL, per Lord Blackburn; *Love v Bell* (1884) 9 App Cas 286 at 289, HL, per Lord Selborne LC. Thus it has been said that if the introduction in the instrument of severance of a clause to the effect that the mines must not be worked so as to let down the surface would not create an inconsistency with the actual clauses of the instrument, then the surface cannot be let down: *Butterknowle Colliery Co Ltd v Bishop Auckland Industrial Co-operative Co Ltd* [1906] AC 305 at 309, HL, per Lord Loreburn LC; and see *Thomson v St Catharine's College, Cambridge* [1919] AC 468, HL. See also, however, the text and note 3 supra.

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131. Implication from reservation of working powers.

The inclusion in the instrument of severance of a clause in the widest terms conferring general powers of working is not sufficient to rebut the presumption in favour of the surface owner; such a clause confers *prima facie* only the powers of working incident at common law to the ownership of mines¹. An implication of the right to withdraw support may, however, be made from the reservation of working powers which existed before the severance, as where mines are excepted from a transfer of the surface, with a reservation of powers of working and getting the excepted minerals² in as full and ample a way as if the transfer of the surface had not been made, coupled or not with a provision for payment by the grantor of compensation for damage or injury done in the exercise of the reserved powers. In these circumstances there may be a necessary implication from the language used that the grantor should be entitled to let down the surface, if he is to be able to work and carry away the minerals as fully as he could have done before the transfer³.

1 See *Harris v Ryding* (1839) 5 M & W 60; *Smart v Morton* (1855) 5 E & B 30; *Roberts v Haines* (1856) 6 E & B 643 (affd (1857) 7 E & B 625, Ex Ch); *Caledonian Rly Co v Sprot (of Garnkirk)* (1856) 2 Macq 449, HL; *Proud v Bates* (1865) 34 LJ Ch 406; *Buchanan v Andrew* (1873) LR 2 Sc & Div 286 at 290, HL, per Lord Selborne LC; *Bell v Love* (1883) 10 QBD 547, CA (affd (1884) 9 App Cas 286, HL); *New Sharlston Collieries Co Ltd v Earl of Westmorland* (1900) [1904] 2 Ch 443n, HL; *Bishop Auckland Industrial Co-operative Society Ltd v Butterknowle Colliery Co Ltd* [1904] 2 Ch 419 at 435, CA, per Vaughan Williams LJ (on appeal [1906] AC 305 at 309, HL, per Lord Loreburn LC); *Butterley Co Ltd v New Hucknall Colliery Co Ltd* [1910] AC 381, HL. For the meaning of 'mine' see PARA 5 ante.

2 For the meaning of 'minerals' see PARA 12 ante.

3 See *Beard v Moira Colliery Co Ltd* [1915] 1 Ch 257, CA. The conveyance in this case contained a provision for payment of compensation for damage to the surface, and it was held that the decisions in *Love v Bell* (1884) 9 App Cas 286, HL, and *Butterknowle Colliery Co Ltd v Bishop Auckland Industrial Co-operative Co Ltd* [1906] AC 305, HL, were not to be extended to the construction of deeds contrary to the long established rule that ordinary words ought to be given their plain and ordinary meaning. See also *Brewer v Rhymney Iron Co* [1910] 1 Ch 766; *Davies v Powell Duffryn Steam Coal Co Ltd* [1917] 1 Ch 488, CA; *Davies v Powell Duffryn Steam Coal Co Ltd (No 2)* (1921) 91 LJ Ch 40, CA, where there was no provision for compensation for surface damage. These Court of Appeal decisions appeared to set at rest a point which had been in doubt since *Chamber Colliery Co Ltd v Twyerould* (1893) [1915] 1 Ch 268n, HL, where Lord Watson treated it as a question of some nicety whether similar words were sufficient to oust the common law right to support. In *New Sharlston Collieries Co Ltd v Earl of Westmorland* (1900) [1904] 2 Ch 443n, HL, Lord Halsbury LC expressed the opinion that such words were in themselves sufficient 'to carry you the whole way'. See further, however, *Wath-upon-Deerne UDC v John Brown & Co Ltd* [1936] Ch 172, where Luxmoore J, construing an Inclosure Act which included such words, held that the common law right of support was not displaced.

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132. Implication from knowledge of parties and mining practice.

An implication of the right to withdraw support may also be made where it is admitted or proved¹ that the parties entered into the transaction with the knowledge that it was impossible to work the mines without causing subsidence². Such knowledge may be a matter of inference from mining practice at the date of severance³.

1 Ie by relevant admissible evidence: see PARA 130 text and note 3 ante.

2 *Butterley Co Ltd v New Hucknall Colliery Co Ltd* [1910] AC 381, HL; *Locker-Lampson v Staveley Coal and Iron Co Ltd* (1908) 25 TLR 136. For the meaning of 'mine' see PARA 5 ante. As to subsidence damage see PARA 184 et seq post.

3 *Butterley Co Ltd v New Hucknall Colliery Co Ltd* [1909] 1 Ch 37, CA; affd [1910] AC 381, HL, where the evidence showed that at the date of severance it was a matter of common knowledge that it was impossible to work the minerals commercially without causing subsidence. The court therefore gave effect to the presumption that the parties intended the minerals to be enjoyed. A suggestion made in that case that there is a difference in principle between the right to support of overlying seams and the right to support of the surface is, it is submitted, untenable: see *Butterley Co Ltd v New Hucknall Colliery Co Ltd* supra at 386 per Lord Macnaghten. As to the inference of knowledge from evidence of mining practice see also *Locker-Lampson v Staveley Iron and Coal Co Ltd* (1908) 25 TLR 136; *Jones v Consolidated Anthracite Collieries Ltd and Lord Dynevor* [1916] 1 KB 123; *Weldon v Butterley Co Ltd* [1920] 1 Ch 130 (overruled on another point by *Warwickshire Coal Co Ltd v Coventry Corp*n [1934] Ch 488, CA); and cf *Wath-upon-Deane UDC v John Brown & Co Ltd* [1936] Ch 172 (knowledge acquired after transaction not enough). For the meaning of 'minerals' see PARA 12 ante.

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133. Implication from express covenants.

A covenant by lessees to work mines¹ fairly and regularly according to the best and most improved method in use in the district indicates an intention to authorise, even if it does not enjoin, the lessees to work on the longwall system if that is the best and most improved system in use in the district². Further, a mining lease may impose on the lessee an obligation to perform certain acts which are plainly inconsistent with the support of the surface³, as where the lessee is under covenant to work so as to produce from the mine the greatest quantity of merchantable coals from each of the seams, and is by the same instrument prohibited from working under a certain area in order that such area may be absolutely protected. Where a substantial area is so protected, the inference may be drawn that the part not specifically protected may be let down⁴.

The protection of a specific area by the absolute prohibition of the working of minerals under it is not, however, necessarily inconsistent with the continuance of the common law right of support from the minerals outside that area⁵; the question is whether upon the construction of the instrument as a whole the common law right is excluded⁶.

1 For the meaning of 'mine' see PARA 5 ante.

2 See *Butterley Co Ltd v New Hucknall Colliery Co Ltd* [1910] AC 381 at 389, HL, per Lord Atkinson; cf *Shafto v Johnson* (1863) 8 B & S 252n at 256n per Page Wood V-C; *Buchanan v Andrew* (1873) LR 2 Sc & Div 286 at 292, HL, per Lord Selborne LC. In *Davis v Treharne* (1881) 6 App Cas 460 at 464, HL, Lord Selborne considered that a covenant to work in 'the most usual and approved way of working' in the county related to the manner of working the mine for mining purposes, and did not affect the collateral obligation to support the surface, that there could not possibly be any local custom in such a district to disregard the right of the surface owner who was not a lessor of the mines, and that the position was no different if the surface owner was also lessor of the mines.

3 See *Davis v Treharne* (1881) 6 App Cas 460 at 469, HL, per Lord Watson.

4 See *Shafto v Johnson* (1863) 8 B & S 252n at 255n per Page Wood V-C. The same lease was considered in *Taylor v Shafto* (1867) 8 B & S 228. The reasoning of Page Wood V-C in *Shafto v Johnson* supra may perhaps explain the dictum of Lord Macnaghten in *Butterknowle Colliery Co Ltd v Bishop Auckland Industrial Co-operative Co Ltd* [1906] AC 305 at 313, HL, to the effect that an obligation in a lease to work out the minerals or to work the minerals in a prescribed manner is not sufficient to exclude the presumption that the surface is to be supported. It was this decision which led Neville J, in *Butterley Co Ltd v New Hucknall Colliery Co Ltd* [1908] 2 Ch 475 (revsd [1909] 1 Ch 37, CA), against his own inclination to find that the right of support was not excluded. Lord Macnaghten himself did not consider that the decision in *Butterley Co Ltd v New Hucknall Colliery Co Ltd* [1910] AC 381, HL (affg [1909] 1 Ch 37, CA) was in any way inconsistent with what he had said in *Butterknowle Colliery Co Ltd v Bishop Auckland Industrial Co-operative Co Ltd* supra; and see [1910] AC at 385. In *Markham v Paget* [1908] 1 Ch 697 at 710, Swinfen Eady J, on the authority of the same dictum, refused to imply, in an agreement for a lease, leave to work on the longwall system, which would necessarily cause subsidence, although the agreement provided that the lease should contain clauses and conditions usual in similar leases in the counties of Derby and Nottingham, and it was proved that working by the longwall system was the usual system in the district. For the meaning of 'minerals' see PARA 12 ante.

5 See *Haines v Roberts* (1857) 7 E & B 625, Ex Ch; *Dugdale v Robertson* (1857) 3 K & J 695.

6 See *Shafto v Johnson* (1863) 8 B & S 252n; *Chamber Colliery Co Ltd v Twyerould* (1893) [1915] 1 Ch 268n, HL; *Brewer v Rhymney Iron Co* [1910] 1 Ch 766 at 770 per Parker J.

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134. Implication from compensation provisions.

Where the power of getting the minerals¹ is made subject to the payment of compensation for surface damage, the scope of the compensation clause may, in the absence of evidence as to the inevitability of subsidence, be material in considering the extent of the working powers granted or reserved². It is not the function of a compensation clause to define or extend working powers³. If the clause is capable of being satisfied by construing it as a provision for compensation in respect of surface injury, caused by the exercise of surface powers, it will be so limited, even where it is wide enough in terms to include surface injury caused by subsidence⁴; if the clause does, in fact, cover injury by subsidence, it only provides a cumulative remedy⁵. In such a case it may refer to injury caused by accident or negligence⁶, and a provision for compensation for injury caused by subsidence is not inconsistent with an obligation not to let down⁷.

The clause may, nevertheless, be so framed as to explain the character and extent of the working powers⁸; thus where no surface powers are granted, but the powers of working are subject to the condition that compensation must be made for injury to buildings on the surface, it is a reasonable, if not a necessary, inference that the kind of working contemplated and sanctioned is such as would cause subsidence and injury to buildings on the surface⁹. On similar principles, where no surface powers are granted and the mine¹⁰ owner is expressly exempted from liability in respect of injury to the surface and the buildings on it, the clause cannot be satisfied by injury other than subsidence, and a power to let down will be inferred¹¹.

1 For the meaning of 'minerals' see PARA 12 ante.

2 See *Executors of John Hargreaves Ltd v Burnley Corp*n [1936] 3 All ER 959 at 968, CA, per Slesser LJ.

3 *Love v Bell* (1884) 9 App Cas 286 at 299, HL, per Lord Watson. As to compensation clauses see PARA 343 post.

4 *Butterknowle Colliery Co Ltd v Bishop Auckland Industrial Co-operative Co Ltd* [1906] AC 305 at 309, 310, HL, per Lord Loreburn LC; and see *Harris v Ryding* (1839) 5 M & W 60; *Smart v Morton* (1855) 5 E & B 30; *Allaway v Wagstaff* (1859) 4 H & N 681; *Davis v Treharne* (1881) 6 App Cas 460, HL; *Mundy v Duke of Rutland* (1883) 23 ChD 81, CA; *Dixon v White* (1883) 8 App Cas 833, HL; *Sitwell v Earl of Lonsdale* [1905] 1 Ch 460. As to subsidence damage see PARA 184 et seq post.

5 *Harris v Ryding* (1839) 5 M & W 60.

6 See *Dixon v White* (1883) 8 App Cas 833, HL.

7 *New Sharlston Collieries Co Ltd v Earl of Westmorland* (1900) [1904] 2 Ch 443n, HL; see at 447n per Lord Davey, who seems to refer to a general provision which may include injury by subsidence, and not necessarily an express provision for compensation for injury caused by subsidence; *Davis v Treharne* (1881) 6 App Cas 460 at 467, 468, HL, per Lord Blackburn; *Butterknowle Colliery Co Ltd v Bishop Auckland Industrial Co-operative Co Ltd* [1906] AC 305 at 315, 316, HL, per Lord Davey.

8 *Love v Bell* (1884) 9 App Cas 286 at 299, HL, per Lord Watson.

9 *Aspden v Seddon* (1875) 10 Ch App 394; and see *Love v Bell* (1884) 9 App Cas 286 at 299, HL, per Lord Watson. See also *Smith v Darby* (1872) LR 7 QB 716; *Twyerould v Chamber Colliery Co* [1892] WN 27, CA (on appeal (1893) [1915] 1 Ch 268n, HL), where there were surface powers, but the compensation clause extended to injury done to buildings, and a right to cause subsidence was inferred. In *Duke of Buccleuch v Wakefield* (1870) LR 4 HL 377 (a case on an Inclosure Act), a power to cause subsidence was inferred; there was a wide compensation provision. The latter case is discussed in *Hext v Gill* (1872) 7 Ch App 699 at 716-717 per Mellish

LJ, and in *Love v Bell* supra at 295, 296, 298 per Lord Watson; it stands by itself. See also *Butterknowle Colliery Co Ltd v Bishop Auckland Industrial Co-operative Co Ltd* [1906] AC 305 at 314, HL, per Lord Macnaghten, and at 316 per Lord Davey.

10 For the meaning of 'mine' see PARA 5 ante.

11 *Williams v Bagnall* (1866) 15 WR 272; *Buchanan v Andrew* (1873) LR 2 Sc & Div 286, HL.

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135. Effect of absence of compensation provisions.

The absence of a provision for compensation is almost conclusive that the common law obligation is to continue¹, and the inadequacy or inappropriateness of the compensation, if applied to damage by subsidence, is cogent evidence that subsidence was not contemplated². Thus a provision for a yearly payment to the surface occupiers for damage and spoil of ground during the time of working cannot apply to subsidence damage, for such damage injures the owner, and may not occur until the workings have ceased³; and a provision that compensation for injury to an allotment in the exercise of reserved mining powers should be made by a rateable levy, enforceable by distress, on the occupiers of other allotments within the township, cannot refer to subsidence, for it would compel temporary occupiers to pay for permanent damage⁴.

1 See *Butterknowle Colliery Co Ltd v Bishop Auckland Industrial Co-operative Co Ltd* [1906] AC 305 at 315, HL, per Lord Davey; *Bell v Earl of Dudley* [1895] 1 Ch 182.

2 See *Butterknowle Colliery Co Ltd v Bishop Auckland Industrial Co-operative Co Ltd* [1906] AC 305 at 314, HL, per Lord Macnaghten. As to subsidence see PARA 184 et seq post.

3 *Love v Bell* (1884) 9 App Cas 286, HL.

4 *Butterknowle Colliery Co Ltd v Bishop Auckland Industrial Co-operative Co Ltd* [1906] AC 305, HL.

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136. Custom and prescription.

An alleged custom to work under the tenements of a manor or under an allotment of the waste so as to cause subsidence, but without payment of compensation, is unreasonable and void¹; although a claim to cause subsidence, based on prescription or custom, may be good, if the exercise of the right is subject to the payment of compensation². The custom alleged must be shown to have existed at the time of severance³.

¹ *Wolstanton Ltd and A-G of Duchy of Lancaster v Newcastle-under-Lyme Corpn* [1940] AC 860, [1940] 3 All ER 101, HL, approving *Hilton v Earl Granville* (1844) 5 QB 701 (tenements). See also *Bell v Love* (1883) 10 QBD 547, CA (affd (1884) 9 App Cas 286, HL); *Marquis of Salisbury v Gladstone* (1861) 9 HL Cas 692; *Blackett v Bradley* (1862) 1 B & S 940 (allotments). In *Gill v Dickinson* (1880) 5 QBD 159, DC, a case on the same Inclosure Act as *Blackett v Bradley* supra the custom was admitted, but the decision has been overruled on this point by *Butterknowle Colliery Co Ltd v Bishop Auckland Industrial Co-operative Co Ltd* [1906] AC 305, HL, a case on the same Inclosure Act.

² As to custom see *Wolstanton Ltd and A-G of Duchy of Lancaster v Newcastle-under-Lyme Corpn* [1940] AC 860, [1940] 3 All ER 101, HL; *Aspden v Seddon*, *Preston v Seddon* (1876) 1 Ex D 496 at 510, CA, per Mellish LJ. See also *Duke of Buccleuch v Wakefield* (1870) LR 4 HL 377 at 395, 396, 399, per Lord Hatherley LC; and CUSTOM AND USAGE. As to prescription see *Rowbotham v Wilson* (1860) 8 HL Cas 348 at 363 per Lord Wensleydale; and EASEMENTS AND PROFITS A PRENDRE. There can be no custom of a county to work to the prejudice of third persons: see *Davis v Treharne* (1881) 6 App Cas 460 at 464, HL, per Lord Selborne.

³ *Smart v Morton* (1855) 5 E & B 30.

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(2) SUPPORT AND COMPULSORY ACQUISITION

(i) In general

137. General statutory codes.

In modern statutes conferring powers for the construction and maintenance of railways and powers for the compulsory purchase of land¹ there are incorporated provisions of the Railways Clauses Consolidation Act 1845 or the Acquisition of Land Act 1981. Each of these Acts contains a group of sections dealing with mines and minerals known as a 'mining code'². The mining code of the Acquisition of Land Act 1981 is a re-enactment in modern form of the code in the Railways Clauses Consolidation Act 1845³.

The mining code of the Railways Clauses Consolidation Act 1845 was substantially modified⁴ by the Mines (Working Facilities and Support) Act 1923, and the mining code as so modified is substituted⁵ for the original code in the Railways Clauses Consolidation Act 1845 as incorporated in any Act, order or other instrument relating to a railway company passed or made on or after 18 July 1923⁶ except in so far as the Act, order or other instrument provides to the contrary⁷. The code as substituted by the Mines (Working Facilities and Support) Act 1923 is itself replaced in relation to railway property by the continuing effect of an agreement⁸ which was made⁹ between the British Railways Board and the National Coal Board (later renamed the British Coal Corporation¹⁰).

A compulsory purchase order¹¹ may, as respects all or any of the land to which it relates, provide for the incorporation with it of the mining code¹² of the Acquisition of Land Act 1981¹³. A local Act may incorporate the code of the Railways Clauses Consolidation Act 1845¹⁴; and model clauses prescribed for inclusion in ministerial orders authorising railways and tramways¹⁵ provide for the incorporation of the code as substituted¹⁶.

The relations of water and sewerage undertakers¹⁷ and of the Environment Agency¹⁸ with owners, lessees and occupiers of minerals are governed by the mining code of the Water Industry Act 1991 and the Water Resources Act 1991¹⁹. The code, which is dealt with elsewhere in this work²⁰, has a broad similarity to the codes referred to above, but differs in some respects²¹.

1 As to compulsory acquisition of land generally see COMPULSORY ACQUISITION OF LAND.

2 I.e. the Railways Clauses Consolidation Act 1845 ss 77-85 (as amended); and the Acquisition of Land Act 1981 s 3, Sch 2 (as amended). For the meaning of 'mine' see PARA 5 ante. The principal mining codes restrict the meaning of 'mine', at least for some purposes: see the Railways Clauses Consolidation Act 1845 s 77; the Acquisition of Land Act 1981 s 3, Sch 2 para 1(2); and PARAS 5 note 17 ante, 144 post. For the meaning of 'minerals' see PARA 12 ante. See also PARAS 13-15 ante.

3 See *ibid* Sch 2 Pt I para 1(1). Schedule 2 (as amended) has effect subject to the Coal Industry Act 1994 s 10(3) (restriction on the circumstances in which powers of compulsory purchase are exercisable in respect of coal or coal mines) (see PARA 71 ante); Acquisition of Land Act 1981 Sch 2 para 1(5) (amended by the Coal Industry Act 1994 s 67(1), Sch 9 para 27(3)).

4 See PARA 145 et seq post.

5 The substituted code for railways represents a statutory compromise between railway authorities and mine owners agreed in consequence of the decision in *Howley Park Coal and Cannel Co Ltd v London and North*

Western Rly Co [1913] AC 11, HL: see *London and North Eastern Rly Co v BA Collieries Ltd* [1945] AC 143 at 176, 177, [1945] 1 All ER 51 at 61, HL, per Lord Macmillan, and at 188, 189 and 68 per Lord Simonds (dissenting); *Thomas McGhie & Sons Ltd v British Transport Commission* [1963] 1 QB 125 at 178, [1962] 2 All ER 646 at 649 per Phillimore J.

6 Ie the date of the passing of the Mines (Working Facilities and Support) Act 1923. For an example of the incorporation of the unamended provisions of the Railways Clauses Consolidation Act 1845 see the Requisitioned Land and War Works Act 1948 s 15(3); and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 528.

7 See the Mines (Working Facilities and Support) Act 1923 s 15 (amended by the Decimal Currency Act 1969 s 10(1)). Where (1) a special Act, order, scheme or certificate confirmed by or having the force of an Act of Parliament relating to a railway company, passed or confirmed before 1 January 1924 (the date of commencement of the Mines (Working Facilities and Support) Act 1923: see s 18(2) (repealed)), incorporates the original mining code of the Railways Clauses Consolidation Act 1845, and does not prescribe any distance in lieu of the distance of 40 yards mentioned in the original mining code (see PARA 151 post); or (2) a special Act relating to a railway company, passed before 1 January 1924, does not incorporate the original mining code, but contains similar provisions, including a provision prescribing a distance of 40 yards, then such Act, order, scheme or certificate takes effect as from that date as if the new mining code were substituted for the original code as incorporated in the Act, order, scheme or certificate, or for the similar provisions contained in the special Act, as the case may be, subject to the Mines (Working Facilities and Support) Act 1923 s 16(2)-(4): s 16(1). See in particular the saving for rights acquired before 1 January 1924 in s 16(4); and PARA 177 post.

8 The agreement was dated 26 January 1982 and superseded an agreement dated 30 November 1959. It was expressed to be made in exercise of powers conferred by the Coal-Mining (Subsidence) Act 1957 s 6(4) (repealed). Similar powers are contained now in the Coal Mining Subsidence Act 1991 s 37(4): see PARA 248 post.

9 The agreement continues in effect subject to the provisions of transfer schemes made under the Railways Act 1993 Pt II (ss 84-116) (as amended) and of a restructuring scheme made under the Coal Industry Act 1994 s 7. As to restructuring schemes see PARA 73 ante.

10 See PARA 2 ante.

11 Ie an order authorising a compulsory purchase: see the Acquisition of Land Act 1981 s 2(1); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 605.

12 See the text and note 3 supra.

13 See the Acquisition of Land Act 1981 Sch 2 para 1(1). The incorporation may extend to Sch 2 Pt II (which re-enacts the Railways Clauses Consolidation Act 1845 s 77 (see PARA 144 post)) or to the Acquisition of Land Act 1981 Sch 2 Pts II, III (which together re-enact the Railways Clauses Consolidation Act 1845 ss 77-85 (see PARA 145 et seq post)): Acquisition of Land Act 1981 Sch 2 para 1(1)(a), (b).

The Acquisition of Land Act 1981 is a consolidating statute and replaces, inter alia, the Acquisition of Land (Authorisation Procedure) Act 1946 (repealed). Compulsory purchase orders made before 30 January 1982 (the date of commencement of the Acquisition of Land Act 1981: see s 35(2)) could incorporate the mining code of the Railways Clauses Consolidation Act 1845 as originally enacted (see PARA 145 et seq post): Acquisition of Land (Authorisation Procedure) Act 1946 s 1(3), Sch 2 para 7(1) (repealed). See further COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 503, 556.

14 See COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 515.

15 Ie under the Transport and Works Act 1992 s 8, which empowers the Secretary of State to prescribe model provisions for incorporation in draft orders concerning the construction and operation of railways and other transport systems. As to the Secretary of State see PARA 4 ante.

16 See eg the model clauses set out in the Transport and Works (Model Clauses for Railways and Tramways) Order 1992, SI 1992/3270, art 2(a), Sch 1 para 2(1); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 310.

17 Ie 'relevant undertakers' within the meaning of the Water Industry Act 1991: see WATER AND WATERWAYS vol 100 (2009) PARA 137.

18 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; WATER AND WATERWAYS vol 100 (2009) PARA 17.

19 See the Water Industry Act 1991 s 188, Sch 14; and the Water Resources Act 1991 s 182, Sch 23 (amended by the Environment Act 1995 s 120(1), Sch 22 para 128). The code is the same in each of the Acts

and is a re-enactment, in modern form, of the codes of the Waterworks Clauses Act 1847 ss 18-27 (repealed) and the Water Act 1945 s 32, Sch 3 Pt IV (repealed): see further WATER AND WATERWAYS vol 101 (2009) PARA 492.

20 See WATER AND WATERWAYS vol 101 (2009) PARA 492 et seq.

21 See *London and North Western Rly Co v Howley Park Coal and Cannel Co* [1911] 2 Ch 97 at 124-125, CA, per Fletcher Moulton LJ; affd [1913] AC 11, HL.

UPDATE

137 General statutory codes

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 16--SI 1992/3270 art 2(a), Sch 1 now Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, art 3(a), Sch 1 (Sch 1 amended by SI 2008/2831, SI 2009/1307).

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138. Special statutes.

Before the passing of the mining codes¹, special provisions relating to mines² and minerals³ were inserted in special Acts authorising the making and maintenance of railways, canals, waterworks, sanitary works, highways and similar works. These provisions were not uniform in character and involved different results as to the relative rights of the surface owner and the mine owner, and consequently regard must be had to the provisions of each particular Act to determine the obligation of the mine owner to support the statutory works and his right to compensation⁴.

1 See PARA 137 ante.

2 For the meaning of 'mine' see PARA 5 ante.

3 For the meaning of 'minerals' see PARA 12 ante.

4 See eg *Knowles & Sons v Lancashire and Yorkshire Rly Co* (1889) 14 App Cas 248, HL; *Wyrley Canal Co v Bradley* (1806) 7 East 368; *Dudley Canal Navigation Co v Grazebrook* (1830) 1 B & Ad 59; *Cromford Canal Co v Cutts* (1848) 5 Ry & Can Cas 442; *North Eastern Rly Co v Crosland* (1862) 32 LJ Ch 353; *Elliot v North Eastern Rly Co* (1863) 10 HL Cas 333; *Dunn v Birmingham Canal Co* (1872) LR 8 QB 42, Ex Ch; *London and North Western Rly Co v Evans* [1893] 1 Ch 16, CA; *Chamber Colliery Co Ltd v Rochdale Canal Co* [1895] AC 564, HL; *New Moss Colliery Co v Manchester, Sheffield and Lincolnshire Rly Co* [1897] 1 Ch 725; *Glamorganshire Canal Navigation Co v Nixon's Navigation Co Ltd* (1901) 85 LT 53, CA; *London and North Western Rly Co v Walker* [1903] AC 289, HL; *Ilkeston Collieries Ltd v Grand Union Canal Co* (1946) 175 LT 12. See further PARAS 139-143 post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(2) SUPPORT AND COMPULSORY ACQUISITION/(i) In general/139. Rights on acquisition by statutory powers.

139. Rights on acquisition by statutory powers.

The rights of a corporation which acquires land or erects works on land in pursuance of statutory powers are the same as would be those of an ordinary individual acquiring the land or erecting the works, except so far as those rights are expressly varied or excepted by the statute under which the land is acquired, or by contract between the parties. Save in so far as that statute or contract does vary or except those rights, the corporation, as against the vendor, is entitled prima facie to such a measure of support to the land purchased from the land (including the subjacent mines¹ and minerals²) retained as is necessary for the land purchased in its condition at the time of the purchase or when applied to the purpose for which the land was expressly acquired³; and the compensation payable includes the loss of value of the mines due to the liability to leave support⁴. However, this presumption may be displaced if there is no provision for giving the owner compensation for imposing this burden on his land⁵. The position may be different with regard to the adjacent mines and minerals of an owner between whom and the statutory undertakers there is no privity. If there is no provision for compensation to the adjacent owner, a right of support will not be presumed⁶, but it may be otherwise when there are compensation provisions which can be applied⁷.

1 For the meaning of 'mine' see PARA 5 ante.

2 For the meaning of 'minerals' see PARA 12 ante.

3 *Caledonian Rly Co v Sprot (of Garnkirk)* (1856) 2 Macq 449, HL; *Elliot v North Eastern Rly Co* (1863) 10 HL Cas 333 (railways under special Acts); *Re Dudley Corp'n and Earl of Dudley's Trustees* (1881) 8 QBD 86, CA (sewer under the Public Health Act 1875; see also PARA 178 post); *Normanton Gas Co v Pope and Pearson Ltd* (1882) 48 LT 666 (affd (1883) 52 LJQB 629, CA) (gas mains under special Act); *London and North Western Rly Co v Evans* [1893] 1 Ch 16, CA (canal under special Act); *Clippens Oil Co v Edinburgh and District Water Trustees* [1904] AC 64, HL (water pipes under special Act); cf *Dixon v White* (1883) 8 App Cas 833, HL; *Bell v Earl of Dudley* [1895] 1 Ch 182. As to the ordinary presumption see PARA 116 et seq ante.

4 *London and North Western Rly Co v Evans* [1893] 1 Ch 16, CA; *Glamorganshire Canal Navigation Co v Nixon's Navigation Co Ltd* (1901) 85 LT 53, CA. Where compensation has been assessed on the basis that a right of support exists no further claim for compensation in respect of such a right may be made when it is desired to work the minerals: *Great Western Rly Co v Cefn Cribbwr Brick Co* [1894] 2 Ch 157.

5 *London and North Western Rly Co v Evans* [1893] 1 Ch 16 at 28, CA, per Bowen LJ (approved generally in *Clippens Oil Co v Edinburgh and District Water Trustees* [1904] AC 64, HL); *Re Dudley Corp'n and Earl of Dudley's Trustees* (1881) 8 QBD 86 at 93, 95, CA, per Brett LJ; *Benfieldside Local Board v Consett Iron Co* (1877) 3 Ex D 54. See also PARA 135 ante.

6 *Metropolitan Board of Works v Metropolitan Rly Co* (1869) LR 4 CP 192, Ex Ch. This was a case of a sewer constructed under a special Act; the sewer might have been constructed of sufficient strength not to require the lateral support of which it was deprived: see *Roderick v Aston Local Board* (1877) 5 ChD 328 at 332 per Jessel MR; affd (1877) 5 ChD 328 at 333, CA. As to the construction of compensation clauses see PARAS 134-135 ante.

7 See *Re Dudley Corp'n and Earl of Dudley's Trustees* (1881) 8 QBD 86, CA, in conjunction with *Roderick v Aston Local Board* (1877) 5 ChD 328, CA, explained in *Jary v Barnsley Corp'n* [1907] 2 Ch 600.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(2) SUPPORT AND COMPULSORY ACQUISITION/(i) In general/140. Special provisions as to support.

140. Special provisions as to support.

Railway Acts passed before the enactment of the general statutory code¹, canal Acts and other similar Acts usually contain specific provisions with regard to mines² and minerals³. Whether the undertakers acquire a right of support is then a question of the construction of the special provisions of the Acts⁴. The Acts may be divided into three classes:

- 86 (1) those in which there is an immediate expressed or implied grant of the right of support, with an inherent right to immediate compensation on the part of the mine owner⁵;
- 87 (2) those in which the mine owner can compel the purchase of support when he is proceeding to work his minerals⁶; and
- 88 (3) those under which the undertakers have a right, but are under no obligation, to purchase support when the minerals are about to be worked⁷.

1 See PARA 137 ante.

2 For the meaning of 'mine' see PARA 5 ante.

3 For the meaning of 'minerals' see PARA 12 ante.

4 *Cromford Canal Co v Cutts* (1848) 5 Ry & Can Cas 442; *Knowles & Sons v Lancashire and Yorkshire Rly Co* (1889) 14 App Cas 248, HL; *London and North Western Rly Co v Walker* [1903] AC 289, HL.

5 See PARA 141 post.

6 See PARA 142 post.

7 See PARA 143 post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(2) SUPPORT AND COMPULSORY ACQUISITION/(i) In general/141. Inherent right to immediate compensation.

141. Inherent right to immediate compensation.

A grant of the right of support will be presumed unless there is some provision inconsistent with the ordinary presumption as between grantor and grantee¹. In addition there may be an express statutory liability imposed on the owner of the mine² not to injure the undertakers' works³; or he may be prohibited from working without the undertakers' consent and without giving security for damage done to their works⁴. In these cases the mine owner has an inherent right to immediate compensation for his obligation to leave support⁵, and this is an item which falls to be included in the compensation paid on the acquisition of the land⁶. After the lapse of time, it will be presumed to have been so included⁷ or to have been waived⁸, even if it appears that the matter was not in fact considered at the time of the acquisition⁹.

1 See *Caledonian Rly Co v Sprot (of Garnkirk)* (1856) 2 Macq 449, HL; *Elliot v North Eastern Rly Co* (1863) 10 HL Cas 333; *North Eastern Rly Co v Crosland* (1862) 4 De GF & J 550; *Benfieldside Local Board v Consett Iron Co* (1877) 3 Ex D 54 (highway). As to the ordinary presumption see PARA 116 et seq ante.

2 For the meaning of 'mine' see PARA 5 ante.

3 *Elliot v North Eastern Rly Co* (1863) 10 HL Cas 333; *North Eastern Rly Co v Crosland* (1862) 4 De GF & J 550.

4 *Caledonian Rly Co v Sprot (of Garnkirk)* (1856) 2 Macq 449, HL.

5 See *North Eastern Rly Co v Elliot* (1860) 1 John & H 145 at 153-154 per Page Wood V-C; affd 2 De GF & J 423 at 432 per Lord Campbell LC.

6 *Re Dudley Corp'n and Earl of Dudley's Trustees* (1881) 8 QBD 86, CA.

7 *London and North Western Rly Co v Evans* [1893] 1 Ch 16, CA; *Clippens Oil Co v Edinburgh and District Water Trustees* [1904] AC 64 at 69, 70, HL, per the Earl of Halsbury LC, and at 71 per Lord Robertson.

8 *London and North Western Rly Co v Evans* [1893] 1 Ch 16, CA; *Clippens Oil Co v Edinburgh and District Water Trustees* [1904] AC 64, HL; and see *Glamorganshire Canal Navigation Co v Nixon's Navigation Co Ltd* (1901) 85 LT 53, CA.

9 *Glamorganshire Canal Navigation Co v Nixon's Navigation Co Ltd* (1901) 85 LT 53, CA.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(2) SUPPORT AND COMPULSORY ACQUISITION/(i) In general/142. Power to compel assessment of compensation.

142. Power to compel assessment of compensation.

In some canal Acts there is imposed upon the owner of excepted mines¹ and minerals² an obligation not to injure the canal as a result of working the mines and minerals. As a rule the obligation is subject to a right on the part of the mine owner, if the result of his working will be to injure the canal or to flood his mines, to initiate proceedings for the assessment of compensation in respect of his obligation to leave support and to compel payment³. In such a case, if, instead of compelling the assessment of compensation, the mine owner proceeds to work and injures the canal, he is liable in damages⁴. Where, however, there are provisions for payment of compensation which apply to mines 'near or under' the canal⁵, and the canal undertaker lawfully refuses to pay compensation, the owner of adjacent mines is not liable in damages on working and injuring the canal⁶, even if he is also the owner of the subjacent mines⁷.

1 For the meaning of 'mine' see PARA 5 ante. As to the meaning of 'mines and minerals' see PARA 12 ante.

2 For the meaning of 'minerals' see PARA 12 ante. See also note 1 supra.

3 *Cromford Canal Co v Cutts* (1848) 5 Ry & Can Cas 442.

4 *Knowles & Sons v Lancashire and Yorkshire Rly Co* (1889) 14 App Cas 248, HL.

5 See, however, *Manchester, Sheffield and Lincolnshire Rly Co v Johnson* (1883) 36 ChD 629n; *Evans v Manchester, Sheffield and Lincolnshire Rly Co* (1887) 36 ChD 626; and the cases cited in notes 6-7 infra.

6 *Chamber Colliery Co Ltd v Rochdale Canal Co* [1895] AC 564, HL.

7 *New Moss Colliery Co v Manchester, Sheffield and Lincolnshire Rly Co* [1897] 1 Ch 725.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(2) SUPPORT AND COMPULSORY ACQUISITION/(i) In general/143. Option to acquire support.

143. Option to acquire support.

Some special Acts contain provisions similar to the provisions of the mining code¹. The common law right of support is displaced from the moment when the owner of the mine² in good faith desires to work such of his minerals³ as lie within the limits prescribed by the Act⁴. The undertakers then have an option, but are under no obligation, to purchase the minerals or to pay compensation in respect of their being left unworked. In these circumstances there may be no remedy available to the mine owner if his mines are flooded⁵.

1 Where these Acts relate to a railway company and prescribe a distance of 40 yards (see PARA 151 post), the provisions of the mining code for railways, as substituted by the Mines (Working Facilities and Support) Act 1923, apply: see s 16(1); and PARAS 137 note 7 ante, 144 et seq post.

2 For the meaning of 'mine' see PARA 5 ante.

3 For the meaning of 'minerals' see PARA 12 ante.

4 See *Dunn v Birmingham Canal Co* (1872) LR 7 QB 244 at 256 per Cockburn CJ (affd LR 8 QB 42, Ex Ch); *Ilkeston Collieries Ltd v Grand Union Canal Co* (1946) 175 LT 12.

5 See *Dunn v Birmingham Canal Co* (1872) LR 7 QB 244 at 256 per Cockburn CJ (affd LR 8 QB 42, Ex Ch); and the Acts considered in *Dudley Canal Navigation Co v Grazebrook* (1830) 1 B & Ad 59; followed in *Stourbridge Navigation Co v Earl of Dudley* (1860) 3 E & E 409, Ex Ch. See also the provisions for support of masonry referred to in *North Eastern Rly Co v Elliot* (1860) 1 John & H 145; affd 2 De GF & J 423. See also *Birmingham Canal Navigation Co v Earl of Dudley* (1862) 7 H & N 969 Ex Ch; *Birmingham Canal Navigation Co v Swindell* (1856) 7 H & N 980n; *Midland Rly Co v Checkley* (1867) LR 4 Eq 19 (lateral support).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(2) SUPPORT AND COMPULSORY ACQUISITION/(ii) Railways, Land acquired under Compulsory Powers and Sanitary Works/144. Minerals do not impliedly pass with the surface.

(ii) Railways, Land acquired under Compulsory Powers and Sanitary Works

144. Minerals do not impliedly pass with the surface.

Under the mining codes¹, railway and other authorities are not entitled to any mines² of coal, ironstone, slate or other minerals³ under land⁴ which they have purchased, except such parts of the mines as are necessary to be dug or carried away or used in the construction of the works⁵, unless those mines are expressly purchased; and, with those exceptions, all those mines are deemed to be excepted out of the conveyance of the land unless they are expressly named in it and conveyed by it⁶.

1 See PARA 137 ante. The codes are self-contained and complete, save as expressly varied by any special Act or agreement: *London and North Eastern Rly Co v BA Collieries Ltd* [1945] AC 143 at 180, [1945] 1 All ER 51 at 63, HL, per Lord Wright.

2 For the meaning of 'mine' see PARA 5 ante. As to the meaning of 'mines and minerals' see PARA 12 ante.

3 For the meaning of 'minerals' see PARA 12 ante. See also note 2 supra.

4 For the meaning of 'land' see PARA 145 note 3 post.

5 See the Railways Clauses Consolidation Act 1845 s 77. The re-enactment in the Acquisition of Land Act 1981 s 3, Sch 2 para 2 (see PARA 137 ante) refers to 'minerals necessarily extracted or used in the construction of the undertaking'. As to the construction of the words in the Railways Clauses Consolidation Act 1845 s 77 see *Great Western Rly Co v Bennett* (1867) LR 2 HL 27 at 38 per Lord Chelmsford LC; *Errington v Metropolitan District Rly Co* (1882) 19 ChD 559, CA; *Nisbet Hamilton v North British Rly Co* (1886) 13 R 454, Ct of Sess.

For the corresponding provisions in the codes relating to water and sewerage undertakers and the Environment Agency see WATER AND WATERWAYS vol 101 (2009) PARA 493.

6 Railways Clauses Consolidation Act 1845 s 77; Acquisition of Land Act 1981 Sch 2 para 2(1), (2). As to whether, under the Railways Clauses Consolidation Act 1845 (as originally enacted), authorities acquiring land from persons having the surface only, but with a right of support, obtain that right with the surface, see *Great Western Rly Co v Fletcher* (1860) 5 H & N 689, Ex Ch; *Pountney v Clayton* (1883) 11 QBD 820 at 843, CA, per Bowen LJ; *Consett Waterworks Co v Ritson* (1889) 22 QBD 318 at 328, 329 per A L Smith J (on appeal 22 QBD 702, CA); *London and North Western Rly Co v Howley Park Coal and Cannel Co* [1911] 2 Ch 97 at 116, 121, 122, 124, 125, CA, per Fletcher Moulton LJ (affd [1913] AC 11 HL); and cf, as to the position created by the corresponding provision in the Waterworks Clauses Act 1847 s 18 (repealed), *New Moss Colliery Ltd v Manchester Corp* [1908] AC 117, HL; *London and North Western Rly Co v Howley Park Coal and Cannel Co* supra at 110 per Cozens-Hardy MR, at 124-126 per Fletcher Moulton LJ, and at 130-131 per Buckley LJ; *Wath-upon-Deane UDC v John Brown & Co Ltd* [1936] Ch 172; *Executors of John Hargreaves Ltd v Burnley Corp* [1936] 3 All ER 959, CA. See also PARAS 145, 174 post; and WATER AND WATERWAYS vol 101 (2009) PARA 493. As to wrongful abstraction of minerals by a railway authority see PARA 45 ante.

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145. General effect of mining codes in relation to railways and compulsory acquisition of land.

Where the mining code of the Railways Clauses Consolidation Act 1845¹ or the mining code of the Acquisition of Land Act 1981 applies², the railway or other authority purchasing land³ is under no necessity to lay out funds at the outset on the purchase of support from minerals⁴ within the area of protection⁵: it may postpone such outlay until the mine owner desires to work the minerals⁶. The railway or other authority has no rights of subjacent or adjacent support from the minerals within the area of protection until and unless such support is acquired either by the purchase of the minerals⁷ or by the payment of compensation for leaving the minerals unworked⁸. If the minerals are not purchased and the mine owner wishes to work his mines⁹, then the occasion when the railway or other authority may acquire support arises; and if the authority, upon notice, does not wish to purchase such support, the mine owner may then remove the adjacent and subjacent support from minerals within the area of protection provided he works in the manner authorised by the code¹⁰.

¹ I.e. the code either as originally enacted or as substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended): see PARA 137 ante.

² See PARA 137 ante.

³ In the mining code of the Railways Clauses Consolidation Act 1845 (both as originally enacted and as substituted), 'lands' includes messuages, land, tenements and hereditaments of any tenure: s 3. In the mining code of the Acquisition of Land Act 1981, 'land' includes messuages, tenements and hereditaments and, in relation to compulsory purchase under any enactment, includes anything falling within the definition of the expression in that enactment: s 7(1).

⁴ For the meaning of 'minerals' see PARA 12 ante.

⁵ As to the area of protection see PARA 151 post.

⁶ *Glasgow Corpn v Farie* (1888) 13 App Cas 657 at 675-676, HL, per Lord Watson; *Great Western Rly Co v Bennett* (1867) LR 2 HL 27; *Fletcher v Great Western Rly Co* (1859) 4 H & N 242 at 252 per Martin B, and at 253 per Watson B (affd (1860) 5 H & N 689 at 698-699, Ex Ch, per Cockburn CJ); *Dunn v Birmingham Canal Co* (1872) LR 7 QB 244 at 256 per Cockburn CJ (affd LR 8 QB 42, Ex Ch); *Smith v Great Western Rly Co* (1877) 3 App Cas 165 at 175, HL, per Lord Cairns LC; *Dixon v Caledonian and Glasgow and South Western Railway Companies* (1880) 5 App Cas 820 at 832, HL, per Lord Selborne LC; *Midland Rly Co v Miles* (1885) 30 ChD 634 at 638 per Pearson J; *Midland Rly Co v Miles* (1886) 33 ChD 632 at 646 per Stirling J; *Midland Rly Co v Robinson* (1887) 37 ChD 386 at 395, CA, per Cotton LJ (affd (1889) 15 App Cas 19 at 28, HL, per Lord Herschell); *Consett Waterworks Co v Ritson* (1889) 22 QBD 318 at 328 per A L Smith J (on appeal 22 QBD 702, CA); *Ruabon Brick and Terra Cotta Co v Great Western Rly Co* [1893] 1 Ch 427 at 454, CA, per Lindley LJ; *Re Lord Gerard and London and North Western Rly Co* [1895] 1 QB 459 at 465, CA, per Lord Esher MR; *Eden v North Eastern Rly Co* [1907] AC 400 at 407, HL, per Lord Macnaghten; *Rugby Portland Cement Co v London and North Western Rly Co* [1908] 2 KB 606 at 618, CA, per Farwell LJ; *Great Western Rly Co v Carpalla United China Clay Co Ltd* [1909] 1 Ch 218 at 230, CA, per Fletcher Moulton LJ (affd [1910] AC 83, HL); *North British Rly Co v Budhill Coal and Sandstone Co* [1910] AC 116 at 126, HL, per Lord Loreburn LC; *London and North Western Rly Co v Howley Park Coal and Cannel Co* [1911] 2 Ch 97 at 114, CA, per Fletcher Moulton LJ (affd [1913] AC 11, HL). Waterworks authorities are in a similar position: see *Holliday v Wakefield Corpn* [1891] AC 81 at 90, HL, per Lord Halsbury LC. See also WATER AND WATERWAYS vol 101 (2009) PARA 494.

⁷ See PARAS 144 ante, 147-150 post.

⁸ See PARAS 159-161 post.

9 For the meaning of 'mine' see PARA 5 ante.

10 See PARA 162 post.

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146. Effect of mining code on common law right of support.

The rights given by the mining code to the railway or other authority are in substitution for the common law rights of support, whether vertical or lateral, from minerals¹ within the area of protection². The general effect of the code is to establish on a statutory basis the reciprocal rights of the railway or other authority and the mineral owners, and these rights are different from and inconsistent with the common law right of vertical and lateral support. In return for the servitude imposed on them, the mine owners have certain rights and privileges granted to them. Those rights and privileges are defined by statute, and are unaffected by any transactions between the railway or other authority and third persons³.

1 For the meaning of 'minerals' see PARA 12 ante.

2 As to the area of protection see PARA 151 post.

3 See *Great Western Rly Co v Bennett* (1867) LR 2 HL 27; *Ruabon Brick and Terra Cotta Co v Great Western Rly Co* [1893] 1 Ch 427, CA; *Re Lord Gerard and London and North Western Rly Co* [1895] 1 QB 459 at 464, CA, per Lord Esher MR; *London and North Western Rly Co v Howley Park Coal and Cannel Co* [1911] 2 Ch 97 at 114, CA, per Fletcher Moulton LJ (affd [1913] AC 11, HL); and see *London and North Eastern Rly Co v BA Collieries Ltd* [1945] AC 143, [1945] 1 All ER 51, HL; cf *Ilkeston Collieries Ltd v Grand Union Canal Co* (1946) 175 LT 12. For specific provision in the case of railways to which the code (see PARA 137 ante) substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended) applies see PARA 176 post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(2) SUPPORT AND COMPULSORY ACQUISITION/(ii) Railways, Land acquired under Compulsory Powers and Sanitary Works/147. Powers of railway or other authority to purchase mines.

147. Powers of railway or other authority to purchase mines.

Railway and other authorities empowered under the Lands Clauses Consolidation Act 1845 to purchase land, have power to purchase mines and minerals¹. Where the mines and minerals belong to the same vendor as does the surface², the purchase of the mines and minerals is merely part of the purchase of the whole of the land, but the power extends also to cases where the mines and minerals and the surface are severed in ownership³. In the exercise of the power the authorities are not affected by the fact that the provisions of the mining codes⁴ are applicable⁵. In any such purchase of land, however, the mines and minerals will not be included unless they are expressly conveyed⁶. The normal procedure is the purchase of the land without the mines and minerals, leaving the mines and minerals to be dealt with when the necessity for them arises⁷.

1 See the Lands Clauses Consolidation Act 1845 s 6; *Errington v Metropolitan District Rly Co* (1882) 19 ChD 559, CA; and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 550-551. For the meaning of 'mine' see PARA 5 ante; and for the meaning of 'minerals' see PARA 12 ante. See in particular para 12 notes 16-18 ante.

2 As to the meaning of 'surface' see PARA 19 ante.

3 This is because 'lands' in the Lands Clauses Consolidation Act 1845 s 6 includes minerals: *Errington v Metropolitan District Rly Co* (1882) 19 ChD 559, CA; and see *Smith v Great Western Rly Co* (1877) 3 App Cas 165 at 180, HL, per Lord Cairns LC.

4 I.e. the mining codes of the Railways Clauses Consolidation Act 1845 or of the Acquisition of Land Act 1981: see PARA 137 ante.

5 *London and North Western Rly Co v Howley Park Coal and Cannel Co* [1911] 2 Ch 97 at 113, CA, per Fletcher Moulton LJ (affd [1913] AC 11, HL); and see *Errington v Metropolitan District Rly Co* (1882) 19 ChD 559, CA; *Midland Rly Co v Haunchwood Brick and Tile Co* (1882) 20 ChD 552 at 556 per Kay J; *Pountney v Clayton* (1883) 11 QBD 820 at 833, CA, per Brett MR; *Holliday v Wakefield Corp* [1891] AC 81 at 86, HL, per Lord Bramwell.

6 See PARA 144 ante.

7 See *London and North Western Rly Co v Howley Park Coal and Cannel Co* [1911] 2 Ch 97, CA; affd [1913] AC 11, HL.

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148. Mode of purchase.

The purchase may be by agreement or under the compulsory powers of the railway or other authority¹ and the provisions of the empowering statute apply to minerals² worked by surface workings as well as to those worked by underground workings³. The mines⁴ and minerals may be purchased as a separate tenement⁵. The mere fact that the authority has already purchased the surface does not exhaust the power; the mines and minerals may be purchased at any time subsequently within the period limited for the exercise of the power, and it is optional on the part of the authority whether the whole, or a part only, of the mines and minerals are purchased at any time⁶.

1 See *London and North Western Rly Co v Howley Park Coal and Cannel Co* [1911] 2 Ch 97 at 112, 113, CA, per Fletcher Moulton LJ; affd [1913] AC 11, HL.

2 For the meaning of 'minerals' see PARA 12 ante.

3 *Glasgow Corpn v Farie* (1888) 13 App Cas 657 at 678, HL, per Lord Watson.

4 For the meaning of 'mine' see PARA 5 ante.

5 *Errington v Metropolitan District Rly Co* (1882) 19 ChD 559, CA; *London and North Western Rly Co v Howley Park Coal and Cannel Co* [1911] 2 Ch 97 at 113, CA, per Fletcher Moulton LJ (affd [1913] AC 11, HL); see *Great Western Rly Co v Bennett* (1867) LR 2 HL 27 at 40 per Lord Cranworth; and *Great Western Rly Co v Smith* (1876) 2 ChD 235 at 244, CA, per James LJ (affd (1877) 3 App Cas 165, HL).

6 *Errington v Metropolitan District Rly Co* (1882) 19 ChD 559, CA; *Re Lord Gerard and London and North Western Rly Co* [1895] 1 QB 459 at 464, CA, per Lord Esher MR.

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149. Limits on exercise of powers.

The power to purchase is only exercisable in respect of mines¹ and minerals² lying under land within the limits prescribed in the special Act, and the compulsory power is only exercisable within the time prescribed by that Act³. After the expiration of the compulsory power, however, the railway or other authority may at any time purchase the mines and minerals within those prescribed limits by agreement⁴. In any event, the authority is empowered to make such purchases, whether compulsory or voluntary, only for the purposes of the works authorised to be constructed by it⁵.

1 For the meaning of 'mine' see PARA 5 ante.

2 For the meaning of 'minerals' see PARA 12 ante.

3 *Errington v Metropolitan District Rly Co* (1882) 19 ChD 559, CA; *London and North Western Rly Co v Howley Park Coal and Cannel Co* [1911] 2 Ch 97 at 113, CA, per Fletcher Moulton LJ (affd [1913] AC 11, HL). The usual time is three years after the passing of the special Act: see the Lands Clauses Consolidation Act 1845 s 123; and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 617. The special Act is the Act which incorporates the statutory code.

4 *Thompson v Hickman* [1907] 1 Ch 550; *London and North Western Rly Co v Howley Park Coal and Cannel Co* [1911] 2 Ch 97, CA; affd [1913] AC 11, HL.

5 *Thompson v Hickman* [1907] 1 Ch 550; *London and North Western Rly Co v Howley Park Coal and Cannel Co* [1911] 2 Ch 97 at 113, CA, per Fletcher Moulton LJ (affd [1913] AC 11, HL); *Pountney v Clayton* (1883) 11 QBD 820 at 830 per Manisty J (on appeal 11 QBD 820 at 832, CA); *Re Lord Gerard and London and North Western Rly Co* [1894] 2 QB 915 (on appeal [1895] 1 QB 459, CA).

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150. Authority is sole judge of its requirements.

The railway or other authority is the sole judge of what it requires, whether it requires only the surface¹, or the surface with the mines² and minerals³, or only the mines and minerals, or only part of the mines and minerals, provided the authority acts in good faith; and the only evidence required is the opinion of the surveyor, engineer or other officer of the authority, unless the surface and mineral owners can show that the authority is not acting in good faith⁴. Want of good faith may be shown in various ways, for example by proving that the authority's object in taking the land is to use it for some collateral purpose; or by proving that the alleged purpose is so absurd, in the circumstances, that it cannot be in good faith⁵. It is not sufficient to say that the authority cannot want the mines and minerals at the time of the purchase of the surface merely because the railway or other works are sufficiently protected by the provisions of the mining code⁶.

1 As to the meaning of 'surface' see PARA 19 ante.

2 For the meaning of 'mine' see PARA 5 ante.

3 For the meaning of 'minerals' see PARA 12 ante.

4 *Errington v Metropolitan District Rly Co* (1882) 19 ChD 559 at 571, CA, per Jessel MR.

5 *Errington v Metropolitan District Rly Co* (1882) 19 ChD 559 at 571, CA, per Jessel MR.

6 See *Stockton and Darlington Rly Co v Brown* (1860) 9 HL Cas 246 at 256 per Lord Cranworth.

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151. The area of protection.

The mining code of the Railways Clauses Consolidation Act 1845 as originally enacted and the mining code of the Acquisition of Land Act 1981¹ extend to the railway² or other undertaking³ and the area within the prescribed distance⁴ or, where no distance is prescribed, 40 yards from it⁵.

Under the substituted code⁶, the area of protection in relation to any seam⁷ of minerals is the area comprising any railway or works of the authority and such a lateral distance therefrom, on all or both sides, as is equal at each point along the railway to one-half of the depth of the seam⁸ at that point or 40 yards, whichever is the greater; and when the lateral distance exceeds 40 yards, the area of protection is divided into two areas: (1) an inner area consisting of the area comprising the railway or works and a distance of 40 yards therefrom on all sides; and (2) an outer area consisting of so much of the area of protection as is not included in the inner area⁹.

1 See PARA 137 ante.

2 'Railway' means the railway and works by the special Act authorised to be constructed: Railways Clauses Consolidation Act 1845 s 3.

3 In the mining code of the Acquisition of Land Act 1981, 'the undertaking' means the undertaking which the acquiring authority is authorised to carry out by the enactment under which the purchase is authorised, but the compulsory purchase order may include such modifications as may be specified in the order: s 3, Sch 2 para 1(4). In the Railways Clauses Consolidation Act 1845, 'the undertaking' means the railway and works of whatever description, by the special Act authorised to be executed: s 2.

4 In the distance prescribed by the special Act or, as the case may be, the compulsory purchase order: see *ibid* s 2; and the Acquisition of Land Act 1981 Sch 2 para 1(3). For the corresponding provisions in the codes relating to water and sewerage undertakers and the Environment Agency see WATER AND WATERWAYS vol 101 (2009) PARA 494.

5 See the Railways Clauses Consolidation Act 1845 s 78 (as originally enacted); and the Acquisition of Land Act 1981 Sch 2 para 1(3). A tenant for life may contract that a transaction affected by this provision is to take effect as if some distance other than 40 yards or the prescribed distance had been mentioned: see the Settled Land Act 1925 s 58(3); and SETTLEMENTS vol 42 (Reissue) PARA 788. For a similar power in relation to certain universities and colleges see the Universities and College Estates Act 1925 s 17(3); and EDUCATION vol 15(2) (2006 Reissue) PARA 1379. As to the measurement of distances see the Interpretation Act 1978 ss 8, 22(1), (2), Sch 2 para 3; and STATUTES vol 44(1) (Reissue) PARA 1387.

6 See PARA 137 ante.

7 'Seam' in relation to minerals includes bed, lode or vein: Railways Clauses Consolidation Act 1845 s 85D(1) (s 85D(1), (2) added by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)). See also PARA 16 ante. For the meaning of 'minerals' see PARA 12 ante.

8 For this purpose, the depth of a seam at any point of the railway is the distance between the rail level and the point where a line drawn vertically through the centre of the railway would first cut the seam of minerals, but, for the purpose only of ascertaining the area of protection, the distance is to be measured, where the railway is carried through a tunnel, from the point where the line would cut the natural surface of the land instead of from the rail level: Railways Clauses Consolidation Act 1845 s 85D(2) (as added: see note 7 *supra*). 'Surface' in relation to land includes any buildings, works or other things erected, constructed or growing on it: s 85D(1) (as added: see note 7 *supra*).

9 *Ibid* s 78(5). See also PARA 137 note 5 ante.

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152. Notice of intention to work.

When a mine owner¹ desires to work minerals lying under² the area of protection³, he must give notice of his intention to the railway or other authority before he begins to work⁴. This obligation to give notice is not affected by any rights or obligations with regard to support which may exist outside the mining code. Thus it makes no difference that the mine owner may already have the right to let down the surface, either unconditionally or subject to the payment of compensation, or that the railway or other authority is already entitled to support⁵. The mine owner is entitled to give the notice even where he intends to lease the minerals to some other person rather than work them himself⁶.

If the mine owner works part of the minerals under the area of protection without giving notice, he commits an illegal act, but he is not thereby precluded from subsequently giving notice as regards the remaining part⁷.

Even though a notice has been given and compensation received in respect of one kind of mineral, such as coal or one seam of coal, the owner who then or subsequently has the right to work another kind of mineral, such as ironstone or another seam of coal, may subsequently give a notice and receive compensation in respect of the latter mineral⁸.

1 In the mining code of the Railways Clauses Consolidation Act 1845, 'mine owner' means the owner, lessee or occupier of mines or minerals (s 78 (as originally enacted)) or, in the case of a railway to which the substituted mining code applies (see PARA 137 ante), includes the owner, lessee or other person entitled to get minerals: s 85D(1) (added by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended) (see PARA 137 ante)). In the mining code of the Acquisition of Land Act 1981, 'owner', in relation to mines or minerals, includes a lessee or occupier: s 3, Sch 2 para 1(2). See also the cases cited in PARA 156 notes 7-8 post. For the meaning of 'mine' see PARA 5 ante; and for the meaning of 'minerals' see PARA 12 ante.

2 In the mining code of the Acquisition of Land Act 1981, the term 'underlying' is used, which, in relation to mines or minerals, means mines or minerals lying under, or within the prescribed distance from, the undertaking: Sch 2 para 1(3). For the meaning of 'undertaking' see PARA 151 note 3 ante; and as to the prescribed distance see PARA 151 note 4 ante.

3 As to the area of protection see PARA 151 ante.

4 See the Railways Clauses Consolidation Act 1845 s 78 (as originally enacted); s 78(1) (substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)); the Acquisition of Land Act 1981 Sch 2 para 3(1); and PARA 137 ante. See also *Dixon v Caledonian and Glasgow and South Western Railway Companies* (1880) 5 App Cas 820 at 839, HL, per Lord Watson; *London and North Western Rly Co v Howley Park Coal and Cannel Co* [1911] 2 Ch 97 at 109, CA, per Cozens-Hardy MR (affd [1913] AC 11, HL).

For the corresponding provisions in the mining codes relating to water and sewerage undertakers and the Environment Agency see WATER AND WATERWAYS vol 101 (2009) PARA 494. As to the variation of rights by agreement in the case of railways see PARA 173 post.

5 *London and North Western Rly Co v Howley Park Coal and Cannel Co* [1911] 2 Ch 97 at 109, CA, per Cozens-Hardy MR (affd [1913] AC 11, HL); and see *New Moss Colliery Ltd v Manchester Corp'n* [1908] AC 117 at 122, HL, per Lord Loreburn LC. As to statutory savings of certain common law rights see PARA 174 post.

6 *Midland Rly Co and Keltering, Thrapston and Huntingdon Rly Co v Robinson* (1887) 37 ChD 386, CA (affd (1889) 15 App Cas 19, HL); and see *Bolsover UDC v Bolsover Colliery Co Ltd* [1947] 1 All ER 130. The owner must in good faith intend that the minerals are to be worked: see PARA 153 post.

7 *Edinburgh and District Water Trustees v Clippens Oil Co* (1898) 25 R 504, Ct of Sess.

8 *Smith v Great Western Rly Co* (1877) 3 App Cas 165, HL; and see *Bolsover UDC v Bolsover Colliery Co Ltd* [1947] 1 All ER 130.

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153. Validity of notice.

The notice of intention to work¹ must be given at least 30 days before the commencement of working², and must in all cases be sufficient in point of form³. It is not necessary to specify in the notice the particular seams which it is intended to work⁴. The notice is not invalid merely because it is not intended to act upon it at once; it is not necessary that there should be an intention to work immediately, or apparently within what may be deemed a reasonable time, if there is in fact an intention to work⁵. The giving of notice some considerable time beforehand entails no hardship on the railway or other authority, for it is not bound to give a counter-notice within 30 days; it may give it at any time⁶. Nevertheless the notice must in all cases be given in good faith⁷. To justify a mine owner in giving the notice, there must be not only an expression of desire, but an honest actual existence of intention, to work either by himself or by his lessee⁸.

1 As to the notice of intention to work see PARA 152 ante.

2 See the Railways Clauses Consolidation Act 1845 s 78 (as originally enacted); s 78(1) (as substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)) (see PARA 137 ante); and the Acquisition of Land Act 1981 s 3, Sch 2 para 3(1). See also *Great Western Rly Co v Bennett* (1867) LR 2 HL 27 at 42 per Lord Westbury.

For the corresponding provisions in the mining codes relating to water and sewerage undertakers and the Environment Agency see WATER AND WATERWAYS vol 101 (2009) PARA 494. As to the variation of rights by agreement in the case of railways see PARA 173 post.

3 *Dixon v Caledonian and Glasgow and South Western Railway Companies* (1880) 5 App Cas 820 at 834, HL, per Lord Selborne LC. Notices or counter-notices and copies of them required or authorised to be served or given under the provisions of the Railways Clauses Consolidation Act 1845 (as substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)) with respect to mines lying under or near the railway must be in writing and are otherwise subject to the provisions of the Law of Property Act 1925 s 196 (as amended) (replacing the Conveyancing Act 1881 s 67 (repealed): see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 621): Railways Clauses Consolidation Act 1845 s 85C (added by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)).

4 *Bolsover UDC v Bolsover Colliery Co Ltd* [1947] 1 All ER 130.

5 *Midland Rly Co and Keltering, Thrapston and Huntingdon Rly Co v Robinson* (1887) 37 ChD 386, CA; affd (1889) 15 App Cas 19, HL.

6 *Dixon v Caledonian and Glasgow and South Western Railway Companies* (1880) 5 App Cas 820, HL; *Smith v Great Western Rly Co* (1877) 3 App Cas 165, HL. See also *Midland Rly Co and Keltering, Thrapston and Huntingdon Rly Co v Robinson* (1887) 37 ChD 386, CA; affd (1889) 15 App Cas 19, HL.

7 *Midland Rly Co and Keltering, Thrapston and Huntingdon Rly Co v Robinson* (1887) 37 ChD 386, CA (affd (1889) 15 App Cas 19, HL, per Kay J); *Midland Rly Co v Haunchwood Brick and Tile Co* (1882) 20 ChD 552 at 558.

8 *Midland Rly Co v Robinson* (1887) 37 ChD 386, CA (affd (1889) 15 App Cas 19, HL); *Eden v North Eastern Rly Co* [1907] AC 400 at 408, HL, per Lord Macnaghten; *Bolsover UDC v Bolsover Colliery Co Ltd* [1947] 1 All ER 130.

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154. Limits of obligation to give notice.

The obligation to give notice of intention to work¹ does not extend to substances which are not minerals within the meaning of the mining code², even though they may be minerals apart from the code: such substances pass to the railway or other authority without express mention on the purchase of the surface lands³. The obligation also does not extend to substances (whether minerals or not) which do not lie within the area of protection⁴, and there is no such obligation in respect of minerals lying under or near land which formerly belonged to a railway or other authority but which has been sold as superfluous⁵.

1 As to the notice of intention to work see PARA 152 ante.

2 As to what substances are minerals within the meaning of the code see PARA 144 ante. For the meaning of 'minerals' see PARA 12 ante.

3 See *North British Ry Co v Budhill Coal and Sandstone Co* [1910] AC 116, HL.

4 *London and North Western Ry Co v Howley Park Coal and Cannel Co* [1911] 2 Ch 97 at 109, CA, per Cozens-Hardy MR; affd [1913] AC 11, HL. As to the area of protection see PARA 151 ante.

5 *Pountney v Clayton* (1883) 11 QBD 820, CA; *London and North Western Ry Co v Howley Park Coal and Cannel Co* [1911] 2 Ch 97, CA (affd [1913] AC 11, HL).

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155. Inspection of mine.

On receipt of the notice of intention to work¹ the railway or other authority may cause the mines² to be inspected by any person appointed by it for the purpose³.

1 As to the notice of intention to work see PARA 152 ante.

2 For the meaning of 'mine' see PARA 5 ante.

3 See the Railways Clauses Consolidation Act 1845 s 78 (as originally enacted); s 78(1) (as substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)) (see PARA 137 ante); and the Acquisition of Land Act 1981 s 3, Sch 2 para 3(2). For the corresponding provisions in the mining codes relating to water and sewerage undertakers and the Environment Agency see WATER AND WATERWAYS vol 101 (2009) PARA 494. For general rights of inspection see PARA 171 post.

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156. Counter-notice.

Where the mining code of the Railways Clauses Consolidation Act 1845 as originally enacted¹ or the mining code of the Acquisition of Land Act 1981² applies, if it appears to the railway or other authority that the working of mines³ or minerals⁴ to which the notice of intention to work⁵ relates is likely to damage the railway or other works, and if the authority is willing to make compensation for such mines and minerals to the mine owner, then the mine owner must not work them⁶. For the purposes of service of a counter-notice, the mine owner is the person who has the present right to work the minerals⁷, even though he intends to grant a lease of the mines and not to work them himself⁸.

In the case of railways and works to which the substituted mining code applies⁹, if it appears to the railway or other authority that the working of any of the minerals to which the notice relates will be likely to damage the railway or works or any part of it or them, the authority may, at any time after the receipt of the notice, give a counter-notice to the mine owner requiring him to leave unworked all or any part of those minerals¹⁰. The counter-notice must specify the minerals so required to be left unworked and the particular portion of the railway or works for the support of which the specified minerals are required to be left unworked¹¹.

There is nothing to prevent the railway or other authority from giving a counter-notice as to part of the minerals at one time, and as to another part at another time, so as to enable them to limit the compensation payable at any time to such part only of the minerals as may be likely to be worked at once¹². If 30 days have elapsed without a counter-notice and the mine owner has begun to work the minerals specified in his notice, the counter-notice is out of time as to such portions as have been worked¹³. It is for the authority to decide whether or not the working of the minerals within the area of protection will damage the railway or works connected with it, and if the counter-notice is given in good faith it will not be set aside¹⁴.

1 See PARA 137 ante.

2 See PARA 137 ante.

3 For the meaning of 'mine' see PARA 5 ante.

4 For the meaning of 'minerals' see PARA 12 ante.

5 As to the notice of intention to work see PARA 152 ante.

6 See the Railways Clauses Consolidation Act 1845 s 78 (as originally enacted); and the Acquisition of Land Act 1981 s 3, Sch 2 para 3(3). The willingness of the authority to make compensation is in practice intimated by counter-notice: see eg *Howley Park Coal and Cannel Co v London and North Western Rly Co* [1913] AC 11 at 21-22, HL, per Viscount Haldane LC. For the corresponding provisions in the mining codes relating to water and sewerage undertakers and the Environment Agency see WATER AND WATERWAYS vol 101 (2009) PARA 494.

7 *Smith v Great Western Rly Co* (1877) 3 App Cas 165 at 178-180, HL, per Lord Cairns LC, at 185, 188 per Lord Penzance, and at 191 per Lord O'Hagan; *Eden v North Eastern Rly Co* [1907] AC 400 at 408, HL, per Lord Macnaghten.

8 *Midland Rly Co v Robinson* (1887) 37 ChD 386, CA (affd (1889) 15 App Cas 19, HL); and see *London and North Eastern Rly Co v BA Collieries Ltd* [1945] AC 143, [1945] 1 All ER 51, HL; and PARA 152 ante.

9 See PARA 137 ante.

10 See the Railways Clauses Consolidation Act 1845 s 78(2) (s 78(2), (3) substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)) (see PARA 137 ante); and notes 7-8 supra. For the requirements as to form and service of the counter-notice see PARA 153 ante. On receipt of a counter-notice where the substituted code applies, the mine owner must serve a copy of it on the royalty owner, if any: Railways Clauses Consolidation Act 1845 s 78(3) (as so substituted). 'Royalty owner' includes any person entitled to receive a royalty in respect of minerals; and 'royalty' includes rent and any other reservation in respect of minerals by the acre, ton or otherwise: s 85D(1) (added by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)). For the corresponding provisions in the mining codes relating to water and sewerage undertakers and the Environment Agency see WATER AND WATERWAYS vol 101 (2009) PARA 494.

11 Ibid s 78(2) (as substituted: see note 10 supra).

12 *Midland Rly Co v Robinson* (1887) 37 ChD 386 at 396, CA, per Cotton LJ, at 402 per Lindley LJ, and at 405 per Lopes LJ; affd (1889) 15 App Cas 19, HL.

13 *Dixon v Caledonian and Glasgow and South Western Railway Companies* (1880) 5 App Cas 820 at 832, HL, per Lord Selborne LC, and at 835 per Lord Blackburn; *Howley Park Coal and Cannel Co v London and North Western Rly Co* [1913] AC 11 at 22, HL, per Viscount Haldane LC.

14 Cf *Errington v Metropolitan District Rly Co* (1882) 19 ChD 559, CA; and see PARA 150 ante.

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157. Effect of counter-notice.

The service of the counter-notice¹ does not constitute a contract for sale and purchase of the minerals²; nor is it a step towards such a contract or towards expropriation. The minerals remain the property of the mine owner³, notwithstanding the payment of compensation, which may be, and often is, equal to what the minerals would be worth if sold; but the mine owner may not remove them, nor may the railway or other authority⁴. It is immaterial that the minerals specified in the counter-notice may be more or less than are in fact necessary for the support of the works, or that artificial support of some kind or other may be sufficient where supplied⁵. The right thus conferred upon the authority is different from a right of support in that the obligation upon the mine owner is a restriction which cannot be created by common law grant⁶. A restriction for the compensation paid is not, therefore, chargeable with ad valorem stamp duty as on a conveyance⁷.

1 As to the counter-notice see PARA 156 ante.

2 For the meaning of 'minerals' see PARA 12 ante.

3 For the meaning of 'mine owner' see PARA 152 note 1 ante. For the meaning of 'mine' see PARA 5 ante.

4 Cf *Errington v Metropolitan District Rly Co* (1882) 19 ChD 559 at 575, CA, per Brett LJ; *Great Northern Rly Co v IRC* [1899] 2 QB 652 at 657, DC, per Darling J, and at 662 per Phillimore J (on appeal [1901] 1 KB 416 at 427, CA, per Collins LJ, and at 428-429 per Stirling LJ); *Bwlfa and Merthyr Dare Steam Collieries (1891) Ltd v Pontypridd Waterworks Co* [1903] AC 426 at 428, HL, per the Earl of Halsbury LC, at 431 per Lord Macnaghten, and at 432-433 per Lord Robertson; *Re Richard and Great Western Rly Co* [1905] 1 KB 68 at 70, CA, per Collins MR, and at 73 per Stirling and Matthew LJ; *Eden v North Eastern Rly Co* [1907] AC 400 at 408, HL, per Lord Macnaghten, and at 411 per Lord Atkinson. Such minerals are sometimes referred to as 'sterilised' minerals.

5 *Great Northern Rly Co v IRC* [1901] 1 KB 416 at 427, CA, per Collins LJ, and at 428 per Stirling LJ.

6 *Great Northern Rly Co v IRC* [1901] 1 KB 416 at 428-429, CA, per Stirling LJ. It is similar to a restrictive covenant.

7 *Great Northern Rly Co v IRC* [1901] 1 KB 416 at 428, CA. Quaere, however, whether the compensation is not chargeable to stamp duty land tax as paid in respect of a land transaction which, subject to certain exemptions, includes the acquisition of the benefit of a restriction over land: see the Finance Act 2003 Pt 4 (ss 42-124).

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158. Restrictions on counter-notice.

Once given, a counter-notice¹ may not be withdrawn². Like the notice of intention to work³, it must be confined to substances which are minerals within the mining code⁴ and lying within the area of protection⁵; it may not apply to substances within the area of protection which are not minerals within the code, or to substances (whether minerals or not) lying outside the area of protection⁶.

1 As to the counter-notice see PARA 156 ante.

2 *Edinburgh and District Water Trustees v Clippens Oil Co* (1902) 87 LT 275, HL; affg (1900) 3 F 1113, Ct of Sess.

3 As to the notice of intention to work see PARA 152 ante.

4 As to such minerals see PARA 144 ante. For the meaning of 'minerals' see PARA 12 ante.

5 *London and North Western Rly Co v Howley Park Coal and Cannel Co* [1911] 2 Ch 97 at 120, CA, per Fletcher Moulton LJ; affd [1913] AC 11, HL. As to the area of protection see PARA 151 ante.

6 *London and North Western Rly Co v Howley Park Coal and Cannel Co* [1911] 2 Ch 97 at 110, CA, per Cozens-Hardy MR, and at 126 per Buckley LJ; affd [1913] AC 11, HL.

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159. Compensation.

Where the mining code of the Railways Clauses Consolidation Act 1845 as originally enacted or the mining code of the Acquisition of Land Act 1981 applies¹, compensation² is payable for the mines within the area of protection³ comprised in the notice of intention to work⁴ and which the railway or other authority requires to be left unworked⁵.

Where the substituted code applies⁶ and the railway or other authority has served a counter-notice⁷ on the mine owner⁸, the minerals⁹ specified in the counter-notice must not be worked or got, and the authority must pay compensation¹⁰ to the mine owner and the royalty owner, if any, for the loss caused by the specified minerals being left unworked¹¹.

1 See PARA 137 ante.

2 The amount of the compensation is to be determined, in default of agreement, by the Lands Tribunal: see the Railways Clauses Consolidation Act 1845 s 78 (amended by the Compulsory Purchase Act 1965 s 39(3), Sch 7); and the Acquisition of Land Act 1981 s 3, Sch 2 para 3(4). As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

3 As to the area of protection see PARA 151 ante. For the meaning of 'mine' see PARA 5 ante.

4 As to the notice of intention to work see PARA 152 ante.

5 See the Railways Clauses Consolidation Act 1845 s 78 (as originally enacted); and the Acquisition of Land Act 1981 Sch 2 para 3(3). For the corresponding provisions in the mining codes relating to water and sewerage undertakers and the Environment Agency see WATER AND WATERWAYS vol 101 (2009) PARA 494.

6 See PARA 137 ante.

7 As to the counter-notice see PARA 156 ante.

8 For the meaning of 'mine owner' see PARA 152 note 1 ante.

9 For the meaning of 'minerals' see PARA 12 ante.

10 The Railways Clauses Consolidation Act 1845 s 78A(1) (as added by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)) (see PARA 137 ante) provides that the compensation payable to the mine owner and the royalty owner respectively is to be determined, in default of agreement, by arbitration; but cf note 2 supra; and the Transport Act 1962 s 95(3), Sch 12 Pt I (repealed), which repeals provisions of the Railways Clauses Consolidation Act 1845 dealing with arbitration. For the meaning of 'royalty owner' see PARA 156 note 10 ante. The arbitrator must state in his decision the tonnage of the specified minerals on which his award is based: s 78A(1) proviso (iv) (as so added). For statutory references to arbitration generally see ARBITRATION vol 2 (2008) PARA 1201 et seq.

11 See the Railways Clauses Consolidation Act 1845 s 78(4) (substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)). The substitution does not change the basis upon which compensation must be made: *London and North Eastern Ry Co v BA Collieries Ltd* [1945] AC 143 at 172, [1945] 1 All ER 51 at 59, HL, per Lord Thankerton, and at 176 and 61 per Lord Macmillan, approving the test laid down in *Bwllfa and Merthyr Dare Steam Collieries* (1891) *Ltd v Pontypridd Waterworks Co* [1903] AC 426, HL; and see PARA 160 post. The decisions on the old mining code are therefore of assistance in construing the substituted code.

UPDATE

159 Compensation

NOTE 2--Reference to the Lands Tribunal is now to the Upper Tribunal: Railways Clauses Consolidation Act 1845 s 78 (amended by SI 2009/1307).

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160. Measure of compensation.

The compensation payable is that part of the entire value of the minerals¹ which is proportionate to the interest of the mine owner², and the difficulty of assessment in such cases is immaterial³. The compensation payable is full compensation⁴, namely what the minerals would have sold for, if worked, less the cost of working them⁵, although interest is not payable between the date of the notice of intention to work⁶ and the date of assessment of compensation⁷.

1 For the meaning of 'minerals' see PARA 12 ante.

2 For the meaning of 'mine owner' see PARA 152 note 1 ante.

3 *Smith v Great Western Rly Co* (1877) 3 App Cas 165, HL; *London and North Eastern Rly Co v BA Collieries Ltd* [1945] AC 143, [1945] 1 All ER 51, HL; cf *Consett Waterworks Co v Ritson* (1889) 22 QBD 318 at 333-336 per Cave J (on appeal 22 QBD 702, CA); and see *Great Western Rly Co v Smith* (1876) 2 ChD 235 at 252, CA, per Mellish LJ (on appeal (1877) 3 App Cas 165, HL). As to apportionment as between reversioners among themselves see *Re Barrington, Gamlen v Lyon* (1886) 33 ChD 523; *Re Robinson's Settlement Trusts* [1891] 3 Ch 129 at 132, 133 per Chitty J; *Cardigan v Curzon-Howe* (1898) 14 TLR 550; *Re Fullerton's Will* [1906] 2 Ch 138.

4 See *Bwlfa and Merthyr Dare Steam Collieries (1891) Ltd v Pontypridd Waterworks Co* [1903] AC 426 at 430, HL, per Lord Macnaghten.

5 *Bwlfa and Merthyr Dare Steam Collieries (1891) Ltd v Pontypridd Waterworks Co* [1903] AC 426, HL; *Smith v Great Western Rly Co* (1877) 3 App Cas 165 at 185, HL, per Lord Penzance; *Eden v North Eastern Rly Co* [1907] AC 400, HL; *Rugby Portland Cement Co v London and North Western Rly Co* [1908] 2 KB 606, CA; *London and North Eastern Rly Co v BA Collieries Ltd* [1945] AC 143, [1945] 1 All ER 51, HL; *Thomas McGhie & Sons Ltd v British Transport Commission* [1963] 1 QB 125, [1962] 2 All ER 646. The fact that the mine owner could have worked other mines in the neighbourhood or that, being a lessee, he could not have exhausted the minerals within the term of his lease, is immaterial: *Eden v North Eastern Rly Co* supra at 404 per Lord Loreburn LC. The physical conditions of the mine, including in particular the difficulties of working it, and the time when the minerals would in the ordinary course be worked so as to arrive at the present value, are matters to be considered: *Edinburgh and District Water Trustees v Clippens Oil Co* (1902) 87 LT 275 at 279, HL, per Lord Robertson; *Eden v North Eastern Rly Co* supra at 412 per Lord Atkinson. If the minerals have no value, no compensation in this respect is payable, but this can seldom happen, notwithstanding that the minerals may be worked at a loss (see *Rugby Portland Cement Co v London and North Western Rly Co* supra at 615 per Gorell Barnes P); but it may happen where the minerals cannot be worked (*Edinburgh and District Water Trustees v Clippens Oil Co* supra at 279 per Lord Robertson). The incidence of taxation must be taken into account (*Thomas McGhie & Sons Ltd v British Transport Commission* supra), and in a case falling within the substituted code (see PARA 137 ante) account must also be taken of the possible contribution (see PARA 164 post) for which the mine owner might in the future have become liable under the Railways Clauses Consolidation Act 1845 s 79A (added by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)), if the coal covered by the counter-notice had been actually worked and damage to the railway and works of the railway authority had been caused by that working: *London and North Eastern Rly Co v BA Collieries Ltd* supra.

The measure of compensation appears to be the same for all of the mining codes, including eg those relating to water and sewerage undertakers and the Environment Agency: see eg *Bwlfa and Merthyr Dare Steam Collieries (1891) Ltd v Pontypridd Waterworks Co* [1903] AC 426, HL; *Edinburgh and District Water Trustees v Clippens Oil Co* (1902) 87 LT 275 at 278, 279, HL, per Lord Robertson; and WATER AND WATERWAYS vol 101 (2009) PARA 492 et seq.

6 As to the notice of intention to work see PARA 152 ante.

7 *Re Richard and Great Western Rly Co* [1905] 1 KB 68, CA; cf *Fletcher v Lancashire and Yorkshire Rly Co* [1902] 1 Ch 901.

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161. Separate assessment of compensation.

Where compensation is payable under the substituted mining code¹ for the loss caused by the specified minerals being left unworked², the compensation payable to the mine owner³ and the royalty owner⁴ must, so far as it is payable in respect of the value of specified minerals, be separately assessed⁵.

The compensation payable⁶ to the mine owner is a sum for each ton of the specified minerals, the rate per ton in the case of minerals lying under the outer area of protection being one-third of the rate which is or would be awarded in the case of minerals lying under the inner area of protection⁷. The mine owner is also entitled to be paid the amount of any increase in the cost of working any part of his minerals (other than the specified minerals) which may have been caused by the failure of the railway or other authority to give the counter-notice⁸ within such a reasonable time as would have enabled the mine owner to avoid the increase in cost⁹.

The compensation payable¹⁰ to the royalty owner is based on the amount which would have been received from time to time by way of royalty in respect of the specified minerals if they had been worked out in the ordinary course, and the royalties payable had been (1) in the case of such of the specified minerals as lie under the inner area of protection, the same as those reserved by and payable under the lease comprising the minerals and subsisting at the date of the counter-notice¹¹; and (2) in the case of such of the specified minerals as lie under the outer area of protection, one-third of the royalties so reserved and payable with a specified addition¹² to such one-third¹³.

1 See PARA 137 ante.

2 See PARA 160 ante. For the meaning of 'minerals' see PARA 12 ante.

3 For the meaning of 'mine owner' see PARA 152 note 1 ante.

4 For the meaning of 'royalty owner' see PARA 156 note 10 ante. For the meaning of 'royalty' see PARA 156 note 10 ante.

5 Railways Clauses Consolidation Act 1845 s 78A(1) proviso (i) (s 78A added by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)) (see PARA 137 ante).

6 ie where payable under the substituted code: see PARA 137 ante.

7 Railways Clauses Consolidation Act 1845 s 78A(1) proviso (ii) (as added: see note 5 supra). As to the inner and outer areas of protection see PARA 151 ante. In *London and North Eastern Rly Co v BA Collieries Ltd* [1945] AC 143 at 168, 181, 182, [1945] 1 All ER 51 at 58, 64, HL, the interpretation of this provision was discussed obiter by Lord Thankerton and Lord Wright respectively. Lord Thankerton considered that the arbitrator's duty was to ascertain the value of the whole of the specified minerals, and to reduce that value to a rate per ton over the whole tonnage and to apply 100% of the rate to the tonnage lying under the inner area, and one-third of that rate to the tonnage lying under the outer area. Lord Wright thought that each ton of the specified minerals should be valued, but that when the arbitrator came to value the mineral in the outer area he should find what he would award for each ton of coal if it had lain in the inner area and then divide it by three.

8 As to the counter-notice see PARA 156 ante.

9 Railways Clauses Consolidation Act 1845 s 78A(2) (as added: see note 5 supra) which provides also that in default of agreement the amount payable is to be determined by arbitration. See, however, PARA 159 note 10 ante.

- 10 le where payable under the substituted code: see PARA 137 ante.
- 11 Railways Clauses Consolidation Act 1845 s 78A(1) proviso (iii)(a) (as added: see note 5 supra).
- 12 le the equivalent of one old penny per ton.
- 13 Railways Clauses Consolidation Act 1845 s 78A(1) proviso (iii)(b) (as added: see note 5 supra).

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162. Working without counter-notice.

Where the mining code of the Railways Clauses Consolidation Act 1845¹ or the mining code of the Acquisition of Land Act 1981 applies² there is no obligation on railway or other authorities to give a counter-notice³ and pay compensation; they may allow the mine owner⁴ to work the minerals⁵; and if a counter-notice is given as to part only of the minerals within the area of protection⁶, it is only in respect of that part that compensation must be paid⁷.

In the absence of a counter-notice or so far as the counter-notice does not extend, the mine owner may work the minerals within the area of protection which are comprised in the notice of intention to work⁸; but such working must be done in the manner proper and necessary for the beneficial working of them and according to the usual manner of working such minerals in the district⁹.

The mine owner may accordingly work the minerals even though the surface is thereby destroyed¹⁰. It is, however, for the mine owner to show that his workings are proper, necessary and usual¹¹. If the railway or other work is destroyed by the mining operations, the railway or other authority cannot be compelled to reinstate it¹². However, where the substituted code applies¹³, the authority may, however, stop the working at any time by giving a counter-notice¹⁴.

1 le the code either as originally enacted or as substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended): see PARA 137 ante.

2 See PARA 137 ante.

3 As to the counter-notice see PARA 156 ante.

4 For the meaning of 'mine owner' see PARA 152 note 1 ante.

5 *Midland Rly Co v Miles* (1886) 33 ChD 632 at 638-639 per Stirling J; *Holliday v Wakefield Corp*n [1891] AC 81 at 87-88, HL, per Lord Bramwell, and at 97 per Lord Watson; *Re Lord Gerard and London and North Western Rly Co* [1895] 1 QB 459 at 466, 467, CA, per Lord Esher MR; *Manchester Corp*n v *New Moss Colliery Ltd* [1906] 2 Ch 564, CA (affd [1908] AC 117, HL). For the meaning of 'minerals' see PARA 12 ante.

6 As to the area of protection see PARA 151 ante.

7 *Midland Rly Co v Miles* (1886) 33 ChD 632 at 649-651 per Stirling J.

8 As to the notice of intention to work see PARA 152 ante.

9 See the Railways Clauses Consolidation Act 1845 s 79 (as originally enacted); s 79(1) (ss 78(2), 79(1) substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)) (see PARA 137 ante); and the Acquisition of Land Act 1981 s 3, Sch 2 para 4(1). For the corresponding provisions in the codes relating to water and sewerage undertakers and the Environment Agency see WATER AND WATERWAYS vol 101 (2009) PARA 494.

10 See *Ruabon Brick and Terra Cotta Co v Great Western Rly Co* [1893] 1 Ch 427 at 453-454, CA, per Lindley LJ, at 457-463 per Bowen LJ, and at 464-465 per A L Smith LJ; *London and North Western Rly Co v Howley Park Coal and Cannel Co* [1911] 2 Ch 97 at 109, CA, per Cozens-Hardy MR (affd [1913] AC 11, HL). As to the common law right of support where the substituted code applies see PARA 176 post.

11 See *Edinburgh and District Water Trustees v Clippens Oil Co* (1898) 25 R 504 at 516, Ct of Sess, per Lord Robertson. The position is different under the mining codes relating to water and sewerage undertakers and the Environment Agency: see WATER AND WATERWAYS vol 101 (2009) PARA 494.

12 *R v Great Western Rly Co* (1893) 62 LJQB 572, CA, where the plaintiffs, who were applying for mandamus, were the mine owners by whose operations the railway in question was destroyed: see *Ruabon Brick and Terra Cotta Co v Great Western Rly Co* [1893] 1 Ch 427, CA.

13 See PARA 137 ante.

14 Railways Clauses Consolidation Act 1845 ss 78(2), 79(1) (both as substituted: see note 9 supra).

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163. Improper working.

The mining codes of the Railways Clauses Consolidation Act 1845¹ and the mining code of the Acquisition of Land Act 1981² provide that if any damage or obstruction is caused to the railway or other works by any improper working of the minerals³ within the area of protection⁴ the damage or obstruction must forthwith be repaired or removed, as the case may require, and the damage made good by the mine owner⁵ at his own expense; and if the repair or removal is not done forthwith, or if the railway or other authority thinks fit, without waiting for it to be done by the mine owner, it may execute it and recover from the mine owner by action the expense occasioned⁶.

1 The code either as originally enacted or as substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended): see PARA 137 ante.

2 See PARA 137 ante.

3 For the meaning of 'minerals' see PARA 12 ante.

4 As to the area of protection see PARA 151 ante.

5 For the meaning of 'mine owner' see PARA 152 note 1 ante.

6 See the Railways Clauses Consolidation Act 1845 s 79 (as originally enacted); s 79(2) (substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended) (see PARA 137 ante); and the Acquisition of Land Act 1981 s 3, Sch 2 para 4(2). See also *Great Western Rly Co v Bennett* (1867) LR 2 HL 27 at 39 per Lord Chelmsford LC; *Midland Rly Co and Kettering, Thrapston and Huntingdon Rly Co v Robinson* (1889) 15 App Cas 19 at 27, HL, per Lord Herschell; *Ruabon Brick and Terra Cotta Co v Great Western Rly Co* [1893] 1 Ch 427 at 436, 441 per Kekewich J (affd [1893] 1 Ch 427 at 441, CA).

For the corresponding provisions in the mining codes relating to water and sewerage undertakers and the Environment Agency see WATER AND WATERWAYS vol 101 (2009) PARA 494.

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164. Contribution to railway or other authority in respect of authorised working.

In the case of railways and works to which the substituted mining code of the Railways Clauses Consolidation Act 1845 applies¹, if a mine owner² works any minerals³ lying under any part of the area of protection⁴ in the authorised manner, he nevertheless becomes liable on demand by the railway or other authority to contribute towards the expenses properly incurred, or to be incurred⁵, by the authority from time to time thereafter in making good any damage caused by the working to the railway or works of the authority (not being protected works comprised in any counter-notice⁶ relating to the area of protection) the appropriate percentage⁷, if any, of those expenses⁸.

The liability of any mine owner under this provision, in respect of any part of the railway or works on which such expenditure has been incurred, is not to exceed a specified aggregate sum⁹ for each ton of the commercially workable¹⁰ minerals, gotten or ungotten, in such part of any seams¹¹ as lies under the area ascertained as respects the several seams in accordance with statutory rules¹², being seams which have been or are being worked under that area¹³. In ascertaining the aggregate sum, however, minerals gotten more than six years before the date on which a contribution is demanded by the authority under this provision are not to be taken into account¹⁴.

1 Ie the code as substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended): see PARA 137 ante.

2 For the meaning of 'mine owner' see PARA 152 note 1 ante.

3 For the meaning of 'minerals' see PARA 12 ante.

4 As to the area of protection see PARA 151 ante.

5 Thus apprehended or potential expenses may be taken into account: *London and North Eastern Rly Co v BA Collieries Ltd* [1945] AC 143, [1945] 1 All ER 51, HL; *Thomas McGhie & Sons Ltd v British Transport Commission* [1963] 1 QB 125, [1962] 2 All ER 646. See further PARA 160 note 5 ante.

6 As to the counter-notice see PARA 156 ante.

7 The appropriate percentage is such as is specified in the Railways Clauses Consolidation Act 1845 s 79A(1) (s 79A(1), (2) added by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)); and the Railways Clauses Consolidation Act 1845 Sch 1 (added by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended), Sch 1) according to the depth of the minerals being so worked: Railways Clauses Consolidation Act 1845 s 79A(1) (as so added). As to the ascertainment of depth see PARA 151 note 8 ante.

8 Ibid s 79A(1) (as added: see note 7 supra).

9 Ie the equivalent of six old pence.

10 As to the meaning of 'commercially workable' see *Griffiths v Rigby* (1856) 1 H & N 237 at 241 per Pollock CB; *Carr v Benson* (1868) 3 Ch App 524, CA.

11 As to the meaning of 'seam' see PARA 151 note 7 ante.

12 Ie the rules contained in the Railways Clauses Consolidation Act 1845 s 79A(2) (as added: see note 7 supra); Sch 2 (substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended), Sch 2): Railways Clauses Consolidation Act 1845 s 79A(2) (as so added).

13 Ibid s 79A(2) (as added: see note 7 supra).

14 Railways Clauses Consolidation Act 1845 s 79A(2) proviso (as added: see note 7 supra). Any dispute arising as to the amount of the expenses towards which a mine owner is liable to contribute or the amount of his contribution, or the amount to be deducted by a mine owner from the royalties payable to the royalty owner is to be settled by arbitration: s 79A(6) (as so added). As to this amount see PARA 165 post. For the meanings of 'royalty' and 'royalty owner' see PARA 156 note 10 ante. As to arbitration see PARA 159 note 10 ante.

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165. Mine owner's right of deduction from royalties.

Where the substituted mining code of the Railways Clauses Consolidation Act 1845¹ applies, any mine owner² making a contribution³ in respect of authorised workings, being a lessee⁴, is entitled to deduct from any royalties then or thereafter becoming due from him to the royalty owner under the lease, one-third part of the amount which he has so contributed⁵. Where, however, the royalty payable under the lease is less than a specified amount⁶ per ton, the amount so deducted must not exceed the amount produced by multiplying one-third of such rate per ton by the tonnage of the minerals with reference to the aggregate amount of which the maximum liability of the mine owner is to be calculated⁷; and where the mine owner is entitled to make such a deduction, the sum reserved by and payable under the lease is deemed to be the net amount arrived at after making the deduction⁸. No such deduction is, however, allowed when the liability of the mine owner to the railway or other authority is a liability arising out of an arrangement between them with respect to the working of minerals under or near the railway or works⁹.

1 Ie the code as substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended): see PARA 137 ante.

2 For the meaning of 'mine owner' see PARA 152 note 1 ante.

3 As to such contributions see PARA 164 ante.

4 'Lessee' includes an under-lessee and a licensee: Railways Clauses Consolidation Act 1845 s 85D(1) (ss 79A, 85D added by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)) (see PARA 137 ante). Where a single mine (see PARA 166 post) is held under leases granted by more than one lessor, any deductions which the mine owner is authorised to make are to be made from the royalties payable to such one or more of such lessors and, if more than one, in such proportions as, in default of agreement, may be determined by arbitration on the application of the mine owner or any of the royalty owners: Railways Clauses Consolidation Act 1845 s 79A(5) (as so added). As to arbitration see, however, PARA 159 note 10 ante. 'Lease' includes an under-lease or other tenancy and a licence: s 85D(1) (as so added). For the meanings of 'royalty' and 'royalty owner' see PARA 156 note 10 ante.

5 See *ibid* s 79A(3) (as added: see note 4 supra). As to the settlement of disputes see PARA 164 note 14 ante.

6 Ie the equivalent of six old pence.

7 See PARA 164 ante.

8 See the Railways Clauses Consolidation Act 1845 s 79A(3) (as added: see note 4 supra).

9 See *ibid* s 79A(4) proviso (as added: see note 4 supra). As to the power to vary rights by agreement see PARA 173 post.

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166. Limitation of contribution in respect of single mine.

Where the substituted mining code of the Railways Clauses Consolidation Act 1845¹ applies, the liability of the mine owner² to contribute³ in respect of authorised workings is subject to the following further limitation as respects damage done by workings in any single mine⁴. When the aggregate of the sums paid by him in satisfaction of that liability amounts to a sum equivalent to a specified amount⁵ for each ton of commercially workable⁶ minerals, gotten or ungotten, in such part of any seams⁷ as lies within the mine and under an area extending laterally on both sides of the railway or works to a distance ascertained in accordance with a statutory rule⁸ and extending longitudinally to a distance co-extensive with the portion of the railway lying over or adjacent to the mine, being seams which have been or are being worked under that area, the mine owner is not liable to make any further contribution⁹ towards the expenses of making good any damage caused to any part of the railway or works by the working of such seams in that mine¹⁰.

Where the liability of a mine owner to contribute in respect of authorised workings is reduced by the operation of this limitation in respect of a single mine, his right to make deductions from royalties¹¹ is proportionately reduced¹².

1 Ie the code as substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended): see PARA 137 ante.

2 For the meaning of 'mine owner' see PARA 152 note 1 ante.

3 As to such contributions see PARA 164 ante.

4 For these purposes, all the minerals which the mine owner is entitled to work and which would have been, or would in the ordinary course of events and in accordance with good mining practice be, worked from the same shafts or adits are deemed to be a single mine: Railways Clauses Consolidation Act 1845 s 79A(4) (added by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended) (see PARA 137 ante). For the meaning of 'mine' see PARA 5 ante; and for the meaning of 'minerals' see PARA 12 ante.

5 Ie the equivalent of six old pence.

6 See PARA 164 note 10 ante.

7 As to the meaning of 'seam' see PARA 151 note 7 ante.

8 Ie the Railways Clauses Consolidation Act 1845 Sch 2 r 1 (Sch 2 added by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended), Sch 2).

9 Ie any further contribution under the Railways Clauses Consolidation Act 1845 s 79A (as added: see note 4 supra): see PARA 164 ante.

10 Ibid s 79A(4) (as added: see note 4 supra).

11 For the meaning of 'royalty' see PARA 156 note 10 ante. As to these deductions see PARA 165 ante.

12 Railways Clauses Consolidation Act 1845 s 79A(4) (as added: see note 4 supra).

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167. Notices and accounts with respect to damage.

In the case of railways and other works to which the substituted mining code applies¹, the railway or other authority must, when and so far as reasonable and practicable, give notice to the mine owner² and royalty owner³, if any, affected, specifying particulars of: (1) the railway or works to which damage has been caused or to which damage is apprehended from the working of any minerals⁴ under the area of protection⁵ sufficient to enable the same to be identified⁶; (2) the nature of the damage or apprehended damage⁷; and (3) the nature of the works intended to be carried out for the purpose of making good or preventing the damage⁸.

The authority must keep separate accounts differentiating the cost of the ordinary maintenance of the railway or works from the cost of making good any damage caused to the railway or works by the working of any minerals under the area of protection, and these accounts must, at all reasonable times, be open for inspection by or on behalf of a mine owner working minerals under or near the railway or works and the royalty owner, if any, of the minerals⁹.

¹ I.e. the code as substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended): see PARA 137 ante.

² For the meaning of 'mine owner' see PARA 152 note 1 ante.

³ For the meaning of 'royalty owner' see PARA 156 note 10 ante.

⁴ For the meaning of 'minerals' see PARA 12 ante.

⁵ As to the area of protection see PARA 151 ante.

⁶ See the Railways Clauses Consolidation Act 1845 s 79B(1)(i) (s 79B added by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)) (see PARA 137 ante).

⁷ See the Railways Clauses Consolidation Act 1845 s 79B(1)(ii) (as added: see note 6 supra).

⁸ Ibid s 79B(1)(iii) (as added: see note 6 supra).

⁹ Ibid s 79B(2) (as added: see note 6 supra).

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168. Rights of access through specified minerals.

Where the mining code of the Railways Clauses Consolidation Act 1845¹ or the mining code of the Acquisition of Land Act 1981 applies², and the working of any minerals³ is prevented by reason of a counter-notice⁴, the mine owner⁵ whose minerals extend so as to lie on both sides of the specified minerals⁶ may cut and make such communication works⁷ through the specified minerals and the strata above or below them as may be requisite to enable him to ventilate, drain and work his remaining minerals; but no such ways may be cut or made upon or so as to injure any part of the protected works⁸.

1 le the code either as originally enacted or as substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended): see PARA 137 ante.

2 See PARA 137 ante.

3 For the meaning of 'minerals' see PARA 12 ante.

4 As to the counter-notice see PARA 156 ante.

5 For the meaning of 'mine owner' see PARA 152 note 1 ante.

6 The mining code of the Acquisition of Land Act 1981 uses the term 'protected minerals' which is defined as mines, measures or strata the working of which is prevented under s 3, Sch 2 para 3(3) (see PARA 159 ante); Sch 2 para 5(4)(a); and see PARA 156 ante.

7 In the mining code of the Acquisition of Land Act 1981, 'communication works' means airways, headings, gateways or water levels: Sch 2 para 5(4)(b). The mining code of the Railways Clauses Consolidation Act 1845 both as originally enacted and as substituted uses the terms 'airways, headways, gateways or water levels': see the Railways Clauses Consolidation Act 1845 s 80 (as originally enacted); s 80 (substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)) (see PARA 137 ante).

8 See the Railways Clauses Consolidation Act 1845 s 80 (as originally enacted); s 80 (as substituted: see note 7 supra); and the Acquisition of Land Act 1981 Sch 2 para 5(1). No such communication works may be of greater dimensions than 8 feet wide and 8 feet high (see the Railways Clauses Consolidation Act 1845 s 80 (as originally enacted); s 80 (as so substituted); and the Acquisition of Land Act 1981 Sch 2 para 5(2)). In the case of railways and other works to which the substituted code applies, no such communication works may be within 40 yards of any other such way, and if the top of the same is more than 160 yards below the average rail level, the width of the way may be 13 feet: Railways Clauses Consolidation Act 1845 s 80 (as so substituted). Where the mining code of the Railways Clauses Consolidation Act 1845 as originally enacted or the mining code of the Acquisition of Land Act 1981 applies, the special Act or compulsory purchase order, as the case may be, may prescribe other dimensions (see the Railways Clauses Consolidation Act 1845 s 80 (as originally enacted); and the Acquisition of Land Act 1981 Sch 2 para 5(2)); and the communication works must not impede passage on the protected works (see the Railways Clauses Consolidation Act 1845 s 80 (as originally enacted); and the Acquisition of Land Act 1981 Sch 2 para 5(3)).

The mine owner may not enter upon and go over a railway to reach and work his mines on the other side: *Midland Rly Co v Miles* (1885) 30 ChD 634 per Pearson J; *Midland Rly Co v Miles* (1886) 33 ChD 632 at 643-644, 648-649 per Stirling J; and see *Re Lord Gerard and London and North Western Rly Co* [1894] 2 QB 915 at 921 per Kennedy J (affd [1895] 1 QB 459, CA).

For the corresponding provisions in the mining codes relating to water and sewerage authorities and the Environment Agency see WATER AND WATERWAYS vol 101 (2009) PARA 495.

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169. Compensation for additional expenses and for severance.

Where the mining code of the Railways Clauses Consolidation Act 1845¹ or the mining code of the Acquisition of Land Act 1981 applies² and a counter-notice³ has been given, the authority must from time to time pay to the mine owner⁴ compensation in respect of the additional expenses and losses incurred by him in consequence of the counter-notice by reason of the continuous working of the mines⁵ or minerals⁶ being interrupted, or by reason of the mines or minerals being worked in the manner authorised and under the restrictions imposed by the mining codes⁷. Where, in the case of railways to which the substituted code⁸ applies, the minerals specified in a counter-notice lie in different seams⁹, the amount payable is to be calculated separately for each seam¹⁰, but where any additional expenditure is incurred on works which serve more than one seam, that expenditure may be apportioned for these purposes between the seams¹¹.

In the cases of railways and other works to which the mining code of the Railways Clauses Consolidation Act 1845 as originally enacted or the mining code of the Acquisition of Land Act 1981 applies, compensation must also be paid in respect of any loss and additional expense incurred by reason of the severance of the land over the mines by the protected works, and for such mines or minerals not purchased by the undertakers as cannot be worked by reason of the making and continuance of the authority's works¹². It is necessary¹³, in order to entitle a mine owner to compensation under these provisions, that his mines should extend so as to lie on both sides of the protected works¹⁴. Compensation for severance is in addition to and not in substitution for the compensation provided by the code for leaving minerals unworked¹⁵. There is provision for the amount of the compensation to be settled by arbitration in case of dispute¹⁶, although it may be that such amount is now to be settled by the Lands Tribunal¹⁷.

1 le the code either as originally enacted or as substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended): see PARA 137 ante.

2 See PARA 137 ante.

3 As to the counter-notice see PARA 156 ante.

4 For the meaning of 'mine owner' see PARA 152 note 1 ante.

5 For the meaning of 'mine' see PARA 5 ante.

6 For the meaning of 'minerals' see PARA 12 ante.

7 See the Railways Clauses Consolidation Act 1845 s 81 (as originally enacted); s 81(1) (s 81 substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)) (see PARA 137 ante); and the Acquisition of Land Act 1981 s 3, Sch 2 para 6(1)(b), (c). In the case of railways to which the substituted mining code applies, the compensation is limited to the appropriate percentage of the additional expenses determined in accordance with the rules contained in the Railways Clauses Consolidation Act 1845 s 81(2) (as so substituted), Sch 3 (added by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended), Sch 3): Railways Clauses Consolidation Act 1845 s 81(1), (2) (as so substituted).

For the corresponding provisions in the mining codes relating to water and sewerage undertakers and the Environment Agency see WATER AND WATERWAYS vol 101 (2009) PARA 496.

8 See PARA 137 ante.

- 9 As to the meaning of 'seam' see PARA 151 note 7 ante.
- 10 See the Railways Clauses Consolidation Act 1845 s 81(4) (as substituted: see note 7 supra).
- 11 See *ibid* s 81(4) proviso (as substituted: see note 7 supra).
- 12 See *ibid* s 81 (as originally enacted); and the Acquisition of Land Act 1981 Sch 2 para 6(1)(a). For the corresponding provisions in the mining codes relating to water and sewerage undertakers and the Environment Agency see WATER AND WATERWAYS vol 101 (2009) PARA 496.
- 13 *Ie* under the Railways Clauses Consolidation Act 1845 s 81 (as originally enacted) or the Acquisition of Land Act 1981 Sch 2 para 6.
- 14 See generally *Holliday v Wakefield Corpn* [1891] AC 81 at 88, HL, per Lord Bramwell; *Whitehouse v Wolverhampton and Walsall Rly Co* (1869) LR 5 Exch 6.
- 15 As to the code provisions for such compensation see PARAS 159-161 ante. See also *Eden v North Eastern Rly Co* [1907] AC 400 at 408, HL, per Lord Macnaghten; *Midland Rly Co v Miles* (1886) 33 ChD 632; *Re Huddersfield Corpn and Jacomb* (1874) 10 Ch App 92.
- 16 See the Railways Clauses Consolidation Act 1845 s 81 (as originally enacted); s 81(3) (as substituted: see note 7 supra); and the Acquisition of Land Act 1981 Sch 2 para 6(2). For the corresponding provisions in the mining codes relating to water and sewerage undertakers and the Environment Agency see WATER AND WATERWAYS vol 101 (2009) PARA 496.
- 17 As to the Lands Tribunal generally see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq. As to arbitration see further PARA 159 note 10 ante.

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170. Compensation to surface owners.

Where the mining code of the Railways Clauses Consolidation Act 1845¹ or the mining code of the Acquisition of Land Act 1981 applies² and any loss or damage is sustained by the owner, lessee or occupier of the land over minerals³ comprised in a counter-notice⁴ (not being the owner or lessee of the minerals) by reason of the making of communication works⁵ where those works would have been unnecessary but for the prevention of the working of the minerals, the railway or other authority must pay full compensation to the owner, lessee or occupier of the surface⁶ for the loss or damage⁷.

1 le the code either as originally enacted or as substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended): see PARA 137 ante.

2 See PARA 137 ante.

3 For the meaning of 'minerals' see PARA 12 ante.

4 As to the counter-notice see PARA 156 ante.

5 See PARA 168 ante.

6 As to the meaning of 'surface' see PARA 151 note 8 ante.

7 See the Railways Clauses Consolidation Act 1845 s 82 (as originally enacted); s 82 (substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)) (see PARA 137 ante); and the Acquisition of Land Act 1981 s 3, Sch 2 para 7(1), (2). Where the substituted code applies, the compensation is to be determined, in default of agreement, by arbitration: Railways Clauses Consolidation Act 1845 s 82 (as so substituted). As to arbitration see, however, PARA 159 note 10 ante. There is no corresponding provision for compensation in the case of waterworks.

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171. Rights of inspection.

Where the mining code of the Railways Clauses Consolidation Act 1845¹ or the mining code of the Acquisition of Land Act 1981 applies² the railway or other authority may, after 24 hours' notice, and in order to ascertain whether or not any mines³ or minerals⁴ are being worked or are about to be or have been worked⁵ so as to damage the railway or works, enter upon any land through or near which the railway or works passes or is or are situate, being land in which the mines or minerals are being worked or lie, or are supposed to be worked or to lie, and may enter into and return from any such mines or minerals or the works connected with them, and for that purpose may make use of any apparatus or machinery belonging to the mine owner⁶, and use all necessary means for discovering the distance from the railway or works to the parts of the mines or minerals which are being or have been worked or are about to be worked⁷.

In the case of railways and works to which the substituted code applies⁸ a similar right of inspection of the railway or works is given to the mine owner who desires to work minerals under or near the railway or works, and also to the royalty owner⁹, if any, or any person duly authorised by either of them¹⁰.

In the case of railways, refusal to allow such inspection¹¹ makes the person offending liable for each refusal to a penalty not exceeding level 2 on the standard scale¹².

1 le the code either as originally enacted or as substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended): see PARA 137 ante.

2 See PARA 137 ante.

3 For the meaning of 'mine' see PARA 5 ante.

4 For the meaning of 'minerals' see PARA 12 ante.

5 These words are taken from the mining code of the Railways Clauses Consolidation Act 1845 s 83 (as substituted: see note 7 infra). In the Railways Clauses Consolidation Act 1845 s 83 (as originally enacted) the words are 'are being worked or have been worked'; and in the Acquisition of Land Act 1981 s 3, Sch 2 para 8(1) they are 'have been worked'.

6 For the meaning of 'mine owner' see PARA 152 note 1 ante.

7 See the Railways Clauses Consolidation Act 1845 ss 78, 83 (both as originally enacted); ss 78(1), 83(1) (both substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)) (see PARA 137 ante); and the Acquisition of Land Act 1981 Sch 2 para 8(1), (2). The words 'are being or have been worked or are about to be worked' are taken from the Railways Clauses Consolidation Act 1845 s 83 (as substituted). Section 83 (as originally enacted) and the Acquisition of Land Act 1981 Sch 2 para 8(2) do not contain any reference to minerals which 'have been worked'.

The code (as substituted) in the Railways Clauses Consolidation Act 1845 empowers the railway authority to inspect and take copies of so much of the working plans and sections of the mine as relate to minerals the working of which affects, has affected or may affect the railway or works (s 83(1) (as so substituted)); but otherwise the codes confer no right to a general inspection of the working plans: see *Eden v North Eastern Rly Co* [1907] AC 400 at 409, 410, HL, per Lord Macnaghten. For the corresponding provisions in the mining codes relating to water and sewerage undertakers and the Environment Agency see WATER AND WATERWAYS vol 101 (2009) PARA 497.

8 See PARA 137 ante.

9 For the meaning of 'royalty owner' see PARA 156 note 10 ante.

10 See the Railways Clauses Consolidation Act 1845 s 83(2) (as substituted: see note 7 supra).

11 In the case where the mining code of the Railways Clauses Consolidation Act 1845 as originally enacted or the mining code of the Acquisition of Land Act 1981 applies, inspection by the railway authority and, where the substituted code applies (see PARA 137 ante), inspection by the railway authority, mine owner or royalty owner.

12 See the Railways Clauses Consolidation Act 1845 s 84 (as originally enacted) (amended by the Justices of the Peace Act 1949 s 46, Sch 7 Pt III; and the Criminal Justice Act 1982 s 46); Railways Clauses Consolidation Act 1845 s 84 (as substituted: see note 7 supra); and the Acquisition of Land Act 1981 Sch 2 para 8(3) (amended by the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 98 note 12 ante.

In the case of refusal by the authority where the substituted code applies, the penalty is payable to the mine owner or royalty owner: Railways Clauses Consolidation Act 1845 s 84 (as so substituted). In all cases the penalty is recoverable by summary proceedings: s 145 (amended by the Summary Jurisdiction Act 1884 s 4, Schedule; the Statute Law Revision Act 1892; and the Transport Act 1962 ss 93(1), 95(1), (2), Sch 12, Pt II). The procedure is criminal, not civil: see *R v Paget* (1881) 8 QBD 151, DC.

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172. Protection against improper working.

Where the mining code of the Railways Clauses Consolidation Act 1845¹ or the mining code of the Acquisition of Land Act 1981 applies², if any minerals³ have been worked or are being worked contrary to the mining code or the special Act of a railway authority, the railway or other authority may give notice to the mine owner⁴ requiring him to construct such works and to adopt such means as may be necessary or proper for making safe the railway or works and for preventing injury to them; and if he does not forthwith proceed to construct the works, the authority may construct the works and recover the expense of it from him by action⁵.

1 le the code either as originally enacted or as substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended): see PARA 137 ante.

2 See PARA 137 ante.

3 For the meaning of 'minerals' see PARA 12 ante.

4 For the meaning of 'mine owner' see PARA 152 note 1 ante.

5 See the Railways Clauses Consolidation Act 1845 s 85 (as originally enacted); s 85 (substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)) (see PARA 137 ante); and the Acquisition of Land Act 1981 s 3, Sch 2 para 9(1), (2).

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173. Variation of rights by agreement.

Where the substituted mining code of the Railways Clauses Consolidation Act 1845 applies¹, a mine owner², a royalty owner³ and the railway authority, or any two of them, may by agreement alter, extend or otherwise vary their respective rights under the code with regard to any minerals to which the code applies⁴, but not so as to prejudice the right of any mine owner, royalty owner or authority not a party to the agreement without his or its consent⁵.

¹ I.e. the code as substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended): see PARA 137 ante.

² For the meaning of 'mine owner' see PARA 152 note 1 ante.

³ For the meaning of 'royalty owner' see PARA 156 note 10 ante.

⁴ As to the minerals to which the code applies see PARA 144 ante. For the meaning of 'minerals' see PARA 12 ante.

⁵ See the Railways Clauses Consolidation Act 1845 s 85A (added by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)) (see PARA 137 ante). The power of variation applies notwithstanding anything contained in the Act: Railways Clauses Consolidation Act 1845 s 85A (as so added). See also the Coal Mining Subsidence Act 1991 s 37(4); and PARA 248 post.

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174. Saving of common law rights.

Where the substituted mining code of the Railways Clauses Consolidation Act 1845 applies¹, the code does not alter, diminish or affect any right to let down the surface², either unconditionally or subject to payment of compensation, or to any other condition, which a mine owner³ or royalty owner⁴ may possess, whether by statute, grant, lease, agreement or otherwise, derived from a title antecedent⁵ to the acquisition by the railway authority of its interest in the surface, or conferred on him by a reservation contained in the grant to the authority, and a mine owner having such a title and having served a notice in accordance with the code with respect to the working of any minerals⁶ is free to work any such minerals as to which a counter-notice⁷ has not been received, discharged from all the restrictions and provisions of the code⁸ other than those⁹ relating to improper working¹⁰. If a counter-notice is served, however, the minerals to which the counter-notice relates are, for the purposes of assessment of compensation payable to the mine owner or royalty owner for leaving them unworked, deemed to be minerals lying wholly within the inner area of protection¹¹, and the appropriate percentage for the purposes of computing compensation for the additional expenses and losses incurred by the mine owner by reason of the counter-notice¹² is 100¹³. In such a case, even if the railway authority is already entitled to support by express grant, or by the exercise of its powers under the Railways Clauses Consolidation Act 1845, the mine owner is not absolved from the obligation of giving notice of intention to work, for the obligation is absolute¹⁴.

1 le the code as substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended): see PARA 137 ante.

2 As to the meaning of 'surface' see PARA 151 note 8 ante.

3 For the meaning of 'mine owner' see PARA 152 note 1 ante.

4 For the meaning of 'royalty owner' see PARA 156 note 10 ante.

5 If a mine owner surrenders his lease (the date of which is antecedent to the acquisition by the railway authority of the surface) and takes a new lease after the acquisition of the surface by the railway authority, his title is not then antecedent to the acquisition of the surface by the railway authority: see *London and North Eastern Rly Co v Hardwick Colliery Co Ltd* [1935] Ch 203.

6 As to the notice of intention to work see PARA 152 ante. For the meaning of 'minerals' see PARA 12 ante.

7 As to the counter-notice see PARA 156 ante.

8 As to these restrictions see PARA 162 et seq ante.

9 See PARA 163 ante.

10 Railways Clauses Consolidation Act 1845 s 85B(2) (added by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)) (see PARA 137 ante).

11 As to the area of protection see PARA 151 ante.

12 As to such compensation see PARA 169 ante.

13 Railways Clauses Consolidation Act 1845 s 85B(2) (as added: see note 10 supra). In assessing compensation it seems that account must be taken of the possible contribution for which the mine owner might in the future have become liable under s 79A (as so substituted) if the coal covered by the counter-notice had

been actually worked and damage to the railway had been caused by that working: *London and North Eastern Ry Co v B A Collieries Ltd* [1945] AC 143 at 173, [1945] 1 All ER 51 at 59, HL, obiter per Lord Thankerton.

14 Railways Clauses Consolidation Act 1845 s 78(1) (as substituted: see note 10 supra); and see the Mines (Working Facilities and Support) Act 1923 s 16(4).

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175. Adjustments between mine owner and royalty owner.

Where the substituted mining code of the Railways Clauses Consolidation Act 1845 applies¹, the code does not affect any agreement between the mine owner² and the royalty owner³ for the payment of any rent or royalty⁴, but the payment of compensation by the railway or other authority to the royalty owner in respect of any minerals extinguishes any liability by the mine owner to pay any royalty in respect of the same minerals⁵, and the mine owner is entitled to make the normal deductions from royalties⁶ notwithstanding anything in any agreement entered into before 1 August 1923⁷, unless the agreement was made after 1 November 1912⁸ and expressly or by necessary implication provided for the payment of royalties in respect of the minerals supporting the railway or works in the event of the mine owner working them in virtue of a right acquired by agreement or statute or otherwise, or for the payment of royalties in respect of those minerals whether or not they are worked⁹.

If the exercise by the railway or other authority of the powers conferred upon it by the code as to minerals within the area of protection¹⁰ will prevent the mine owner from producing such a quantity of minerals as at the royalty rate will equal the fixed or minimum rent¹¹ reserved by his lease, or otherwise occasions serious hardship having regard to his obligation to pay such rent, or owing to any provision in the lease restricting the time within which a deficiency due to previous short working may be made good, such adjustment must be made between the royalty owner and the mine owner as, in default of agreement, may be determined by arbitration¹².

1 Ie the code as substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended): see PARA 137 ante.

2 For the meaning of 'mine owner' see PARA 152 note 1 ante.

3 For the meaning of 'royalty owner' see PARA 156 note 10 ante.

4 Railways Clauses Consolidation Act 1845 s 85B(1) (s 85B added by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended)) (see PARA 137 ante). For the meaning of 'royalty' see PARA 156 note 10 ante.

5 Railways Clauses Consolidation Act 1845 s 85B(1) proviso (i) (as added: see note 4 supra). For the meaning of 'minerals' see PARA 12 ante.

6 Ie the deductions authorised by ibid s 79A(3) (as added: see note 4 supra): see PARA 165 ante.

7 The Mines (Working Facilities and Support) Act 1923 was passed on 18 July 1923 and came into operation on 1 January 1924: s 18(2) (repealed).

8 Ie the date of the decision in *Howley Park Coal and Cannel Co v London and North Western Rly Co* [1913] AC 11, HL: see PARA 137 ante.

9 Railways Clauses Consolidation Act 1845 s 85B(1) proviso (ii) (as added: see note 4 supra).

10 As to the area of protection see PARA 151 ante.

11 As to the meanings of 'fixed rent' and 'minimum rent' see PARA 333 post.

12 Railways Clauses Consolidation Act 1845 s 85B(1) proviso (iii) (as added: see note 4 supra). As to arbitration see, however, PARA 159 note 10 ante.

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176. Support apart from the code.

Where the substituted mining code of the Railways Clauses Consolidation Act 1845 applies¹ and except as expressly provided in the code or under any agreement between the railway or other authority and the mine owner², the mine owner, as between himself and the authority: (1) is not under any liability to leave support either inside or outside the area of protection³; and (2) is entitled to remove such support without being liable for any damage thereby caused to the railway or works or any part of them, provided the removal is done in a manner proper and necessary for the beneficial working of the minerals and according to the usual manner of working minerals in the district⁴.

1 The code as substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended): see PARA 137 ante.

2 For the meaning of 'mine owner' see PARA 152 note 1 ante.

3 Railways Clauses Consolidation Act 1845 s 85E(a) (added by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended) (see PARA 137 ante). As to the area of protection see PARA 151 ante.

4 Railways Clauses Consolidation Act 1845 s 85E(b) (as added: see note 3 supra). As to the right of support at common law see PARA 116 et seq ante. For the meaning of 'minerals' see PARA 12 ante.

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177. Rights acquired before 1 January 1924.

The substituted mining code of the Railways Clauses Consolidation Act 1845¹ does not take away, diminish or prejudicially alter or affect any estate, right or interest in minerals² which may have been acquired by a railway or other authority before 1 January 1924³ under or by virtue of any express provision in any deed or contract, or under or by virtue of the exercise of its powers under the code as originally enacted⁴, or any right of support from minerals which any such authority may have so acquired, or any compensation paid or payable by any such company in consequence of the exercise before 1 January 1924 of any of its powers under the original code⁵. The substituted code does not affect any agreement subsisting between a railway or other authority and a mine owner⁶ or a royalty owner⁷ on 1 January 1924 with regard to the working, or the leaving unworked, of minerals lying under or near to any railway or works of the authority, so long as the agreement remains in force, and any such agreement continues in force until determined by effluxion of time, or by the exercise of any power of determination conferred by it; and a new agreement may be entered into⁸.

1 Ie the code as substituted by the Mines (Working Facilities and Support) Act 1923 s 15 (as amended): see PARA 137 ante.

2 For the meaning of 'minerals' see PARA 12 ante.

3 Ie the date of coming into force of the Mines (Working Facilities and Support) Act 1923: see PARA 175 note 7 ante.

4 Ie the Railways Clauses Consolidation Act 1845 ss 78-85 (as originally enacted).

5 Mines (Working Facilities and Support) Act 1923 s 16(4)(a).

6 For the meaning of 'mine owner' see PARA 152 note 1 ante.

7 For the meaning of 'royalty owner' see PARA 156 note 10 ante.

8 Mines (Working Facilities and Support) Act 1923 s 16(4)(b).

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(3) STATUTORY RIGHT TO WITHDRAW SUPPORT: COAL MINING

178. Extent of the right to withdraw support from land in relation to coal-mining operations.

On and after the restructuring date¹, any licensed operator² is entitled, so far as may be reasonably requisite for the carrying on of any coal-mining operations³ to which the licensing requirements apply⁴, to withdraw support from certain land⁵. This provision applies to any land, not being land comprised in an underground coal mine⁶, if:

- 89 (1) a notice relating to that land has been given⁷ and has come into force⁸;
- 90 (2) immediately before the restructuring date the British Coal Corporation was entitled under and in accordance with the statutory provisions then in force⁹ to withdraw support from that land; or
- 91 (3) certain transitional conditions relating to notice given before the restructuring date are satisfied¹⁰,

and a right under this provision has effect whether the coal¹¹ in relation to which the operations concerned are carried on lies under the land to which this provision applies or under adjacent land¹².

1 Ie 31 October 1994: see PARA 3 note 9 ante.

2 For the meaning of 'licensed operator' see PARA 60 note 12 ante. In the case of any licensed operator who is entitled by virtue of these provisions to withdraw support from any land, the rights comprised in his entitlement are also exercisable by any person authorised (ie as mentioned in the Coal Industry Act 1994 s 27(4): see PARA 94 ante) to act on his behalf in the carrying on of any of the operations which the operator is authorised to carry on: s 38(4).

3 As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

4 Ie the Coal Industry Act 1994 s 25: see PARA 91 ante.

5 Ibid s 38(1). Previous statutory provision for the withdrawal of support from land was contained in the Coal Act 1938 s 4, Sch 2 (repealed); and later in the Coal Industry Act 1975 s 2 (repealed), which conferred on the British Coal Corporation a right to withdraw support to enable coal to be worked, subject to the publication of notice in the London Gazette and on two successive weeks in local newspapers. The relevant date of publication for these purposes is the date on which the notice is published in the London Gazette or, if it is later, is first published in the local newspapers: see s 2 (repealed). As to the British Coal Corporation see PARAS 2-3 ante. Subject to the provisions of the Coal Industry Act 1994 s 38, the rights conferred by the Coal Industry Act 1975 s 2 (repealed) are not exercisable on or after the restructuring date: Coal Industry Act 1994 s 38(7).

6 'Underground coal mine' means any coal mine which is a mine within the meaning of the Mines and Quarries Act 1954 (see PARA 5 note 14 ante): Coal Industry Act 1994 s 38(6). As to the meaning of 'coal mine' see PARA 5 note 15 ante.

7 Ie in accordance with ibid s 39: see PARA 179 post.

8 A notice comes into force with whichever is the later of the following: (1) the expiry of the period of three months beginning with the day after the relevant date of publication; and (2) the time when particulars of the notice are first registered by the Coal Authority (ie in accordance with ibid s 56: see PARA 108 ante): s 38(3). 'Relevant date of publication', in relation to a notice under the Coal Industry Act 1975 s 2 (repealed), has the

same meaning as in that provision (see note 5 supra); and, in relation to a notice under the Coal Industry Act 1994 s 38, means whichever is the later of (a) the date of the publication of the notice in the London Gazette; and (b) the date of the first of the publications in a local newspaper (ie for the purposes of s 39(3)(b): see PARA 179 head (b) post): s 38(5). As to the Coal Authority see PARA 52 et seq ante.

Where a copy of any notice under s 38 is sent to the Authority more than 14 days before the end of the period of three months mentioned in head (1) supra the duty of the Authority to enter particulars of that notice in the register (ie the register maintained under s 56: see PARA 108 ante) must be discharged before the end of that period of three months: s 56(2). The Authority must not enter any particulars of any notice under s 38 in the register unless it is satisfied that the notice has been properly given in accordance with the requirements of the Coal Industry Act 1994, and that the posting requirements of s 39(4) (see PARA 179 post) have been complied with in relation to that notice: see s 56(3).

9 Ie the Coal Industry Act 1975 s 2 (repealed): see note 5 supra.

10 The conditions are that: (1) the relevant date of publication of a notice under *ibid* s 2 (repealed) (see note 5 supra) relating to that land is a date not more than three months before the restructuring date; (2) the Corporation would (apart from the Coal Industry Act 1994 s 38(7): see note 5 supra) have become entitled as mentioned in head (2) in the text at the end of the period of three months beginning on the relevant date of publication; and (c) that period has expired: see s 38(2).

11 For the meaning of 'coal' see PARA 50 note 10 ante.

12 Coal Industry Act 1994 s 38(2).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(3) STATUTORY RIGHT TO WITHDRAW SUPPORT: COAL MINING/179. Notices in connection with the statutory right to withdraw support.

179. Notices in connection with the statutory right to withdraw support.

No notice in connection with the right to withdraw support from land¹ may be given except: (1) by a person who, on the relevant date of publication², is a licensed operator³ and as the holder of a licence⁴ has an area of responsibility⁵ that consists of or includes all the land to which the notice relates; or (2) by a person who, on that date, is authorised by such a licence, or by virtue of a licence originally granted by the British Coal Corporation⁶, to carry on coal-mining operations⁷ and has the approval of the Coal Authority⁸ for the giving of a notice relating to the land in question⁹.

The notice, which must contain certain information¹⁰, is to be given by being published (a) in the London Gazette¹¹; and (b) at least once in each of two successive weeks, in newspapers circulating in the locality where that land is situated¹². Not later than the relevant date of publication of a notice¹³, the person giving that notice must serve a copy on every planning authority¹⁴ within whose area or district any part of the land to which the notice relates is situated; and must also post a copy or copies of the notice in some conspicuous place or places on that land¹⁵.

1 Ie under the Coal Industry Act 1994 s 38: see PARA 178 ante.

2 For the meaning of 'relevant date of publication' see PARA 178 note 8 ante.

3 For the meaning of 'licensed operator' see PARA 60 note 12 ante.

4 Ie under the Coal Industry Act 1994 Pt II (ss 25-36) (as amended): see PARA 91 et seq ante.

5 As to the areas of responsibility see PARA 207 post.

6 Ie a licence granted under the Coal Industry Nationalisation Act 1946 s 36(2) (repealed), which continues to have effect by virtue of the Coal Industry Act 1994 s 25(3): see PARA 91 ante. As to the British Coal Corporation see PARAS 2-3 ante.

7 Ie coal-mining operations to which ibid s 25 applies: see PARA 91 ante. As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

8 As to the Coal Authority see PARA 52 et seq ante.

9 Coal Industry Act 1994 s 39(1).

10 A notice must (1) indicate the land to which it relates either by reference to a map or in any other manner which, in the circumstances, is sufficient to identify it; (2) identify the person by whom the notice is given, and summarise the respects in which the requirements of ibid s 39(1) (see the text and notes 1-9 supra) are satisfied in relation to that person; and (3) state that there are proposals to carry on coal-mining operations which may require the exercise in relation to that land of the right to withdraw support mentioned in s 38(1) (see PARA 178 ante): s 39(2).

11 Ibid s 39(3)(a).

12 Ibid s 39(3)(b).

13 Ie under ibid s 38: see PARA 178 ante.

14 For these purposes, 'planning authority' means any local planning authority within the meaning of the Town and Country Planning Act 1990 (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 2): see the Coal Industry Act 1994 s 39(5).

15 Ibid s 39(4).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(3) STATUTORY RIGHT TO WITHDRAW SUPPORT: COAL MINING/180. Revocation of the statutory right to withdraw support.

180. Revocation of the statutory right to withdraw support.

The right of a licensed operator¹ to withdraw support² may, in relation to any land to which it applies, be revoked by a notice given by the Coal Authority³. Where the Coal Authority gives a notice in relation to any land to which the provisions concerning the right to withdraw support apply⁴, those provisions cease to apply to that land in relation to any coal-mining operations⁵ carried on after the relevant date of publication⁶. The Authority must not give such a notice unless it appears to it that there is not for the time being any person who is authorised⁷ to carry on coal-mining operations which might involve the withdrawal of support from the land in question⁸.

A notice under these provisions must indicate the land to which it relates, either by reference to a map or in any other manner which, in the circumstances, is sufficient to identify it⁹; and must state that the provisions giving rights to withdraw support¹⁰ are to cease to apply to the land¹¹. The notice must be published (1) in the London Gazette; and (2) at least once in each of two successive weeks, in newspapers circulating in the locality where that land is situated¹². Not later than the relevant date of publication of the notice, the Authority must serve a copy of the notice on every planning authority¹³ within whose area or district any part of the land to which the notice relates is situated¹⁴.

1 For the meaning of 'licensed operator' see PARA 60 note 12 ante.

2 As to the statutory right of a licensed operator to withdraw support from land in relation to coal mining see PARAS 178-179 ante.

3 As to the Coal Authority see PARA 52 et seq ante.

4 I.e the Coal Industry Act 1994 s 38: see PARA 178 ante.

5 As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

6 Coal Industry Act 1994 s 41(1). 'Relevant date of publication', in relation to a notice under s 41, means whichever is the later of: (1) the date of the publication in the London Gazette (see head (1) in the text); and (2) the date of the first of the publications of that notice in local newspapers (see head (2) in the text): s 41(6).

A revocation under s 41(1) is subject to the effect of any notice under s 38 (see PARA 178 ante) which is given at any time after the relevant date of publication of the notice under s 41: see s 41(5).

7 I.e authorised by a licence under *ibid* Pt II (ss 25-36) (as amended) or by virtue of s 25(3): see PARA 91 et seq ante.

8 *Ibid* s 41(2).

9 *Ibid* s 41(3)(a).

10 I.e *ibid* s 38: see PARA 178 ante.

11 *Ibid* s 41(3)(b).

12 *Ibid* s 41(3)(c).

13 For these purposes, 'planning authority' means any local planning authority within the meaning of the Town and Country Planning Act 1990 (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 2): Coal Industry Act 1994 s 41(6).

14 Ibid s 41(4). As to registration of the notice see s 56; and PARA 108 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(3) STATUTORY RIGHT TO WITHDRAW SUPPORT: COAL MINING/181. Savings for special cases.

181. Savings for special cases.

There are four special cases in which the right to withdraw support¹ is subject to specific restrictions or modifications.

First, where the British Coal Corporation² was bound, immediately before the restructuring date³, by (1) the provisions of an agreement made between the Corporation (or any of its predecessors⁴) and a person who was interested in any land⁵, which has effect so as to require the Corporation to comply with an undertaking (contained in the agreement) not to work any coal, not to work minerals or not to withdraw support from any land; or (2) any provisions containing any restriction, terms or conditions applicable to the working of coal by virtue of an agreement entered into after 1 July 1942 and before the restructuring date; or (3) the provisions of any coal-mining lease⁶ prohibiting the withdrawal of support from any land specified in the lease, the right to withdraw support⁷ has effect subject to those provisions, but only so far as they have effect in relation to the Corporation or any other person who is for the time being bound by them⁸.

Secondly, the provisions relating to the withdrawal of support from land⁹ do not affect any restrictions, terms or conditions applicable to the working of coal by virtue of a working facilities order¹⁰, or by virtue of the restrictions on the working of coal which was vested in statutory undertakers¹¹; and the right to withdraw support is without prejudice to the effect of any restructuring scheme¹² on any of those restrictions, terms or conditions¹³.

Thirdly, the provisions relating to the withdrawal of support from land¹⁴ have effect subject to any right¹⁵ to which the activities of the Corporation were subject immediately before the restructuring date¹⁶.

Fourthly, nothing in the provisions relating to the withdrawal of support from land¹⁷ confers any entitlement to withdraw support in connection with the working of any coal or coal mines¹⁸ comprised in land in the Forest of Dean or any other part of the area of what was the Hundred of St Briavels¹⁹ in the county of Gloucester, being land in respect of which the privileges of free miners²⁰ are exercisable²¹.

Nothing in the Coal Industry Act 1994 or in any other enactment may be taken as preventing any person from entering, at any time on or after the restructuring date, into an agreement by virtue of which he accepts a prohibition or restriction on the exercise of his rights²² to withdraw support from land²³.

1 Ie the right granted under the Coal Industry Act 1994 s 38: see PARA 178 ante.

2 As to the British Coal Corporation see PARAS 2-3 ante.

3 Ie 31 October 1994: see PARA 3 note 9 ante.

4 References in the Coal Industry Act 1994 s 40, in relation to an agreement which has effect with respect to the working of coal, to a predecessor of the Corporation are references to the Coal Commission or the person in whom the fee simple of the coal was vested when the agreement was entered into: s 40(5). As to the Coal Commission see PARA 1 ante. For the meaning of 'coal' see PARA 50 note 10 ante.

5 'Interested' must be construed, in relation to a person referred to as interested in any coal or mine of coal, or in any other land, as referring to any person entitled to, or to exercise, or interested in, or in the exercise of, any estate, interest, charge or power (including an option or right of pre-emption, and including a contingent executory or future interest or a possibility coupled with an interest whether or not the object of the gift or

limitation of such interest or possibility be ascertained) in, on or over that coal or mine or that other land, as the case may be, or in, on or over the rents and profits thereof, otherwise than in respect only of the benefit of a servitude or restrictive covenant adversely affecting that coal or mine or that other land, as the case may be: Coal Act 1938 s 44 (repealed with savings) (definition applied by the Coal Industry Act 1994 s 40(1)). For the meaning of 'coal' see PARA 1 note 7 ante; and for the meaning of 'mine of coal' see PARA 1 note 8 ante.

6 'Coal-mining lease' means in relation to any coal a lease that confers a right to work and carry away that coal, and means in relation to any mine of coal a lease that confers a right to use it for a coal-mining purpose: Coal Act 1938 s 44 (repealed with savings) (definition applied by the Coal Industry Act 1994 s 40(1)).

7 See note 1 supra.

8 Coal Industry Act 1994 s 40(1).

9 See note 1 supra.

10 Ie an order made, whether before or after the restructuring date, under the Mines (Working Facilities and Support) Act 1966 s 1 or s 7 (both as amended): see PARA 383 et seq post.

11 Ie the Coal Act 1938 s 33 (repealed) or any consent required by virtue of that provision: see further PARA 182 post.

12 As to restructuring schemes see PARA 73 ante.

13 See the Coal Industry Act 1994 s 40(2).

14 See note 1 supra.

15 Ie any such right as was referred to in the Coal Act 1938 s 34(1) (repealed) (rights of the Crown, local authorities, highway authorities or statutory undertakers). As to the saving of such rights see the Coal Industry Act 1994 s 67, Sch 10 para 4.

16 See *ibid* s 40(3).

17 See note 1 supra.

18 As to the meaning of 'coal mine' see PARA 5 note 15 ante.

19 As to the areas included in the Forest of Dean and the Hundred of St Briavels see PARA 608 post.

20 For the meaning of 'free miner' see PARA 608 note 11 post.

21 Coal Industry Act 1994 s 40(4). As to mining in Gloucestershire generally see PARA 608 et seq post.

22 Ie under *ibid* s 38: see PARA 178 ante.

23 *Ibid* s 40(7).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(3) STATUTORY RIGHT TO WITHDRAW SUPPORT: COAL MINING/182. Consent required for the working of coal previously vested in statutory undertakers.

182. Consent required for the working of coal previously vested in statutory undertakers.

Where any coal¹ which was vested in the British Coal Corporation² immediately before the restructuring date³ is coal which cannot be worked without the consent of the person in whom any statutory undertaking is vested⁴, the consent of the person in whom that undertaking is for the time being vested⁵ continues to be required on and after that date for the working of that coal⁶. A consent so required must not be unreasonably withheld⁷, but this does not preclude the right of any person whose consent is sought for these purposes (1) to give consent subject, so far as may be reasonably requisite (a) to a condition that the working of the coal must not be such as to let down any land in which that person is interested in respect of the undertaking in question or must be limited to working in particular places or in a particular manner; or (b) to other conditions or limitations as regards the working consented to or the payment of proper compensation for, or the making good of, damage arising from it; or (2) to require, as a condition of consent, payment of a reasonable sum in respect of any legal or other expenses incurred in connection with the consent⁸. These requirements are enforceable by the persons in whom the undertaking in question is for the time being vested; and are so enforceable in the same manner and (subject to any transfer of liabilities in accordance with a restructuring scheme⁹) against the same persons as it would have been enforceable¹⁰ immediately before the restructuring date by the persons in whom that undertaking was vested at that time¹¹.

1 For the meaning of 'coal' see PARA 50 note 10 ante.

2 As to the British Coal Corporation see PARAS 2-3 ante.

3 I.e. 31 October 1994: see PARA 3 note 9 ante.

4 I.e. by virtue of the Coal Act 1938 s 33 (repealed). Under this provision, coal which was previously vested in statutory undertakers was subject to the restriction that the coal was not to be worked without the consent of the persons in whom the undertaking was for the time being vested: see s 33 (repealed). Such a restriction was enforceable by the persons in whom the undertaking was for the time being vested in the like manner and against the like persons as if it had been imposed by a covenant entered into by the Coal Commission on 1 July 1942: see s 33(6) (repealed). As to the Coal Commission see PARA 1 ante. 'Statutory undertakers' meant a local authority, company or other body or person authorised by or under an Act of Parliament, or an order having the force of an Act of Parliament, to construct, work, or carry on a railway, canal, inland navigation, dock, harbour, tramway, gas, electricity, water, sewage disposal, or other public undertaking: see s 33(1) (repealed).

5 If at any time the undertaking in question is vested in a person having no interest in land supported by that coal, consent for the working of the coal ceases from that time to be required: Coal Industry Act 1994 s 67, Sch 10 para 3(2).

6 Ibid Sch 10 para 3(1).

7 Ibid Sch 10 para 3(3). See also note 8 infra.

8 Ibid Sch 10 para 3(4). Any question arising under Sch 10 para 3(3) (see the text and note 7 supra) or Sch 10 para 3(4) must be referred to and determined by the High Court: Sch 10 para 3(5). On such a reference, the High Court has power to dispense with the required consent either without conditions or limitations or subject to any such conditions or limitations as are mentioned in Sch 10 para 3(4): Sch 10 para 3(6). In determining any question referred to it under these provisions, the High Court must have regard primarily to the safety and efficient working of the undertaking in question: Sch 10 para 3(7).

9 As to restructuring schemes see PARA 73 ante.

- 10 le by virtue of the Coal Act 1938 s 33(6) (repealed): see note 4 supra.
- 11 Coal Industry Act 1994 Sch 10 para 3(8).

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183. Damage arising from exercise of right.

The provisions of the Coal Industry Act 1994 which deal with the right to withdraw support from land¹ do not include provisions for compensation². Liabilities in connection with any damage caused by the withdrawal of support are governed by the general statutory provisions relating to subsidence damage by coal mining³.

1 I.e. the Coal Industry Act 1994 s 38: see PARA 178 ante.

2 As to claims for compensation in relation to statutory rights to withdraw support see PARA 250 post.

3 As to subsidence damage by coal mining see PARA 202 et seq post. For the meaning of 'subsidence damage' see PARA 205 post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(4) SUBSIDENCE DAMAGE/(i) Common Law/184. Nature of the action for damage.

(4) SUBSIDENCE DAMAGE

(i) Common Law

184. Nature of the action for damage.

At common law, if the surface¹ subsides and is injured by the removal of the supporting strata, the owner of the surface, if entitled to the right of support², may bring a claim against the owner of the minerals³ or other person who removed the strata⁴ for the damage sustained by the subsidence, even though on the supposition that the surface and the minerals belong to the same owner the mining operations may not have been conducted negligently or contrary to the custom of the district⁵. Although it is not clear what is the true category of such a claim⁶, it is not founded on negligence, but arises from the invasion of the right of the surface owner⁷.

1 For the meaning of 'surface' see PARA 19 ante.

2 As to the general principles of the right of support see PARA 116 et seq ante. As to the withdrawal of support for the purpose of coal-mining operations see the Coal Industry Act 1994 ss 38-41; and PARA 178 et seq ante.

3 For the meaning of 'minerals' see PARA 12 ante.

4 As to the persons liable for wrongful withdrawal of support see PARAS 192-195 post.

5 *Humphries v Brogden* (1850) 12 QB 739 at 744 per Lord Campbell CJ; and see *Bankart v Houghton* (1860) 27 Beav 425 at 433, obiter, per Romilly MR. As to the damage caused by the withdrawal of support in connection with coal-mining operations see the Coal Mining Subsidence Act 1991; and PARA 202 et seq post.

6 *Graff Bros Estates Ltd v Rimrose Brook Joint Sewerage Board* [1953] 2 QB 318 at 324, 325, [1953] 2 All ER 631 at 633, CA, per Singleton LJ.

7 *Brown v Robins* (1859) 4 H & N 186 at 193 per Martin B; and see *British Coal Corp'n v Ellistown Pipes Ltd (Hepworth Building Products)* [1994] RVR 81, CA. As to the effect of statutes of limitation see generally LIMITATION PERIODS vol 68 (2008) PARA 901 et seq. As to actions by and against personal representatives see EXECUTORS AND ADMINISTRATORS.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(4) SUBSIDENCE DAMAGE/(i) Common Law/185. The cause of action.

185. The cause of action.

The damage, not the withdrawal of support, is the cause of action, and no right of the surface¹ owner is infringed unless and until subsidence results². The mine³ owner may remove every atom of the minerals⁴ so long as the soil above does not fall; there is, therefore, no interference with the surface owner's right of enjoyment of his land, and no cause of action on his part, unless and until actual damage results from the removal of the minerals⁵. If, however, the condition of the surface owner's land is altered by subsidence, substantial in amount, so as to interfere with his ordinary enjoyment of his land, he may bring a claim without proof of pecuniary loss⁶.

Each fresh and independent subsidence gives rise to a new cause of action, and it is no answer to the surface owner's claim for compensation to say that he has already brought a claim and obtained compensation for previous damage, even though the subsidence results from the same excavation⁷.

A subsidence which is merely a stage in a continuous process can also constitute a distinct cause of action. There is no distinction in this respect between a case where the subsidence has gone on continuously and a case where it has taken place by fits and starts⁸.

1 For the meaning of 'surface' see PARA 19 ante.

2 See *Darley Main Colliery Co v Mitchell* (1886) 11 App Cas 127 at 133, HL, per Lord Halsbury.

3 For the meaning of 'mine' see PARA 5 ante.

4 For the meaning of 'minerals' see PARA 12 ante.

5 See *Backhouse v Bonomi* (1861) 9 HL Cas 503; *Darley Main Colliery Co v Mitchell* (1886) 11 App Cas 127, HL; *West Leigh Colliery Co Ltd v Tunnicliffe and Hampson Ltd* [1908] AC 27 at 29, HL, per Lord Macnaghten. A mine owner who removes the minerals and substitutes artificial support incurs no liability if there is no subsidence: *Rowbotham v Wilson* (1857) 8 E & B 123 at 157, obiter, per Cresswell J (dissenting) (affd on other grounds (1860) 8 HL Cas 348); *Darley Main Colliery Co v Mitchell* supra at 133-134, HL, per Lord Halsbury. As to the liability of successive owners see PARA 193 post.

6 *Mitchell v Darley Main Colliery Co* (1884) 14 QBD 125 at 137-138, CA, per Bowen LJ (affd (1886) 11 App Cas 127, HL); *A-G v Conduit Colliery Co* [1895] 1 QB 301 at 310-314, DC, per Collins J. If and so far as *Smith v Thackerah* (1866) as reported in 35 LJCP 276 lays down a contrary rule, it must be regarded as overruled by the authorities cited earlier in this note, but it may perhaps be distinguished as a case in which damage not measurable in money was treated as negligible and consequently disregarded on the de minimis principle: see *A-G v Conduit Colliery Co* supra at 313 per Collins J.

7 *Darley Main Colliery Co v Mitchell* (1886) 11 App Cas 127, HL. There is nothing in this result which conflicts with the ordinary principle that all damages incident to one cause of action must be recovered once and for ever; the application of the principle is that all damages resulting from the same subsidence must be recovered in one and the same claim: *Darley Main Colliery Co v Mitchell* supra at 132-133 per Lord Halsbury. As to when time begins to run under the Limitation Act 1980 see LIMITATION PERIODS vol 68 (2008) PARA 920 et seq.

8 *Crumbie v Wallsend Local Board* [1891] 1 QB 503, CA.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(4) SUBSIDENCE DAMAGE/(i) Common Law/186. Effect of other workings.

186. Effect of other workings.

To establish liability at common law on the part of a mine¹ owner whose operations have contributed to or caused damage by subsidence, it is necessary to show that he has infringed a legal right of the party who has suffered injury. Thus if land whose stability has been diminished by undermining subsides in consequence of the mining operations of a neighbouring proprietor, the neighbouring proprietor is under no liability if his land did not afford support to his neighbour's land before any mining took place and the right of support has not been acquired against him for the land in its altered state². This is so even if no subsidence would have resulted but for the operations of the neighbouring proprietor, and the principle may also apply if the mine owner whose operations have caused damage is a mere trespasser³. However, the mine owner will be liable for the whole damage arising from his workings if his land in fact afforded support to the neighbouring land in its natural state, even though the extent of the damage has been increased by former workings of another person or the injured party himself⁴.

1 For the meaning of 'mine' see PARA 5 ante.

2 *Partridge v Scott* (1838) 3 M & W 220; *Birmingham Corp'n v Allen* (1877) 6 ChD 284, CA.

3 *Darley Main Colliery Co v Mitchell* (1886) 11 App Cas 127 at 146, HL, per Lord Bramwell.

4 See *Brown v Robins* (1859) 4 H & N 186; *Hunt v Peake* (1860) John 705; *Manley v Burn* [1916] 2 KB 121, CA.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(4) SUBSIDENCE DAMAGE/(i) Common Law/187. Defective construction of buildings.

187. Defective construction of buildings.

The nature of the soil may affect the right of action, but defective construction of buildings apparently does not. Damages may be awarded for injury to buildings erected on undermined ground, even though the buildings have not been constructed of sufficient solidity considering the nature of the ground, if a right of support has been acquired for the land in its altered state¹. Defective construction of buildings may nevertheless affect the measure of damages².

¹ *Richards v Jenkins* (1868) 17 WR 30; and see *Aynsley v Bedlington Coal Co Ltd* (1918) 87 LJKB 1031 at 1035, CA, per Pickford LJ, and at 1037, obiter, per Scrutton LJ.

² See *Jones v Consolidated Anthracite Collieries and Lord Dynevor* [1916] 1 KB 123 at 137 per Scrutton J.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(4) SUBSIDENCE DAMAGE/(i) Common Law/188. Measure of damages.

188. Measure of damages.

In accordance with general principles, the measure of damages is prima facie the diminution attributable to the subsidence in the value of the land to the claimant or, in the case of a claimant in possession with full ownership, the cost of reasonable reinstatement¹. Certain consequential loss may also be recovered². In estimating the diminution in value no allowance may be made for prospective injury from future subsidence, even subsidence from the same excavation; the prospective damage gives rise to no cause of action, and it cannot be rendered actionable by tacking it onto a claim which is admittedly actionable³.

Injury to buildings will generally be included in the damage, and will be so if a right of support has been acquired for the buildings. The principle is not limited, however, to the acquired right of support: where the natural right exists, the value of buildings may be recovered if their weight has in no way contributed to the subsidence⁴. Nevertheless the value of a house may not be recoverable if it has fallen by its own weight⁵.

1 *Tunncliffe and Hampson Ltd v West Leigh Colliery Co Ltd* [1905] 2 Ch 390; and see notes 3, 5 infra. As to damages generally see DAMAGES.

2 As to the recovery of consequential loss see PARA 189 post.

3 *West Leigh Colliery Co Ltd v Tunncliffe and Hampson Ltd* [1908] AC 27, HL. As to prospective injury as a possible element in equitable damages see *Barbagallo v J F Catelan Pty Ltd* [1986] 1 Qd R 245 at 250-252, Qd SC, per Thomas J (withdrawal of support case); and DAMAGES.

4 *Brown v Robins* (1859) 4 H & N 186; *Hamer v Knowles* (1861) 6 H & N 454; and see *Aynsley v Bedlington Coal Co Ltd* (1918) 87 LJB 1031 at 1035, CA, per Pickford LJ, and at 1037, obiter, per Scrutton LJ.

5 *Wilde v Minsterley* (1639) 2 Roll Abr 564, Trespass (I); Com Dig, Action upon the Case for a Nuisance (A); *Palmer v Fleshees* (1663) 1 Sid 167; *Wyatt v Harrison* (1832) 3 B & Ad 871 at 876. In *Woodall v Hingley* (1866) 14 LT 167 at 168, Martin B gave his opinion that if a house is built upon loose sandy soil and the house is damaged in consequence partly of the bad soil on which it was built and partly of the mining operations of a neighbour in his own land, no action is maintainable against the neighbour; but see PARA 186 text and note 4 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(4) SUBSIDENCE DAMAGE/(i) Common Law/189. Consequential damage.

189. Consequential damage.

In addition to damages for depreciation in the value of buildings, consequential damages may also be recovered for injury by loss of profit in trade¹. Where the right of support is an acquired right, allowance may also be made in respect of loss through a house being rendered uninhabitable². The right to recover consequential damages may be excluded by an express covenant of indemnity against any physical damage that may be caused³.

1 *Stroyan v Knowles* (1861) 6 H & N 454. For the rules governing the measure of damages in tort generally see DAMAGES.

2 *Markham v Paget* [1908] 1 Ch 697.

3 See *Butterley Co Ltd v New Hucknall Colliery Co Ltd* [1910] AC 381 at 392, HL, per Lord Atkinson.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(4) SUBSIDENCE DAMAGE/(i) Common Law/190. Purchaser's rights in respect of subsequent subsidence.

190. Purchaser's rights in respect of subsequent subsidence.

Where land containing old workings is sold and subsidence occurs after the sale, the purchaser takes the property at his own risk if there is no fraud or concealment and the fact of the existence of the workings is known to the purchaser at the date of the purchase. If subsidence ensues, it is the necessary consequence of the condition of the property at the time of the purchase¹.

¹ See *Spoor v Green* (1874) LR 9 Exch 99 at 108 per Cleasby B, and at 111 per Bramwell B. The statement in the headnote to this decision that the principle of *Backhouse v Bonomi* (1861) 9 HL Cas 503 (see PARA 185 text and note 5 ante) has no application in the case of subsidence caused by a trespasser appears to be incorrect. As to the extent of a vendor's duty to disclose latent defects see SALE OF LAND vol 42 (Reissue) PARA 48.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(4) SUBSIDENCE DAMAGE/(i) Common Law/191. Remedies for disturbance.

191. Remedies for disturbance.

In the case of damage by subsidence, the remedy is usually in tort, but there may also be a remedy in contract or for breach of a qualification or condition attached to the right to withdraw support. Instruments of severance frequently contain express provision for payment of compensation for surface¹ damage. It is a question of construction whether that provision extends to damage by subsidence; if it does, and the instrument does not confer upon the mine² owner the right to let down the surface, the remedy provided is cumulative³. If, on the other hand, the instrument gives a right to withdraw support, the remedy, if any, lies either in contract or for breach of a qualification or condition attached to the right to withdraw support⁴.

The right to recover damages by a civil claim may be replaced by a statutory remedy⁵.

1 For the meaning of 'surface' see PARA 19 ante.

2 For the meaning of 'mine' see PARA 5 ante.

3 *Harris v Ryding* (1839) 5 M & W 60; *Smart v Morton* (1855) 5 E & B 30; and see PARA 134 ante.

4 *Aspden v Seddon* (1876) 1 Ex D 496, CA; *Chamber Colliery Co Ltd v Twyerould* (1893) [1915] 1 Ch 268n, HL; and see *Tito v Waddell (No 2)* [1977] Ch 106 at 296-299, [1977] 3 All ER 129 at 286-289 per Megarry V-C. It is a question of construction of the instrument of severance whether the obligation to pay compensation amounts to a qualification or condition attached to the right to withdraw support, or alternatively whether the obligation is an independent obligation for breach of which an action lies in contract: see *Tito v Waddell (No 2)* supra at 297, 302, and at 287, 291. See also PARA 197 post.

5 As to the statutory remedies for subsidence damage caused by withdrawal of support in connection with coal-mining operations see the Coal Mining Subsidence Act 1991; and PARA 211 et seq post. Other statutory remedies may be by relevant local legislation: see eg the Manchester Ship Canal (Bridgewater Canal) Act 1907, which authorises the working of mines and minerals under and adjacent to a certain part of the Bridgewater Canal. The Act was amended to take account of the restructuring of the coal industry under the Coal Industry Act 1994 by the Manchester Ship Canal (Bridgewater Canal) Act 1907 (Amendment) Order 1996, SI 1996/1484. As to the restructuring of the coal industry under privatisation see PARAS 3, 50 et seq ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(4) SUBSIDENCE DAMAGE/(i) Common Law/192. Persons liable for withdrawal of support.

192. Persons liable for withdrawal of support.

If the withdrawal of the support is wrongful, the person who has made the excavation is, in general, the only person liable. As between the lessor and the lessee of mines¹, it is the lessee who is primarily liable, but circumstances may exist which render the lessor jointly or solely liable. Thus if a lessee acts under the authority of his lessor, both are liable for wrongful withdrawal of support².

1 For the meaning of 'mine' see PARA 5 ante.

2 *Siddons v Short* (1877) 2 CPD 572; and see *Davis v Treharne* (1881) 6 App Cas 460, HL.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(4) SUBSIDENCE DAMAGE/(i) Common Law/193. Liability of successive owners.

193. Liability of successive owners.

Where subsidence occurs after the original wrongdoer has gone out of possession, a later occupier is not, in general, liable in respect of it; for, although the cause of action is not complete until subsidence occurs¹, neither is it constituted without the original excavation or omission to substitute artificial support². A later occupier who has made no excavation is under no duty to substitute artificial support for that withdrawn by his predecessor, nor is any liability imposed upon him merely by virtue of his occupation of the mine³.

1 See PARA 185 ante.

2 See *Darley Main Colliery Co v Mitchell* (1886) 11 App Cas 127, HL.

3 *Greenwell v Low Beechburn Coal Co* [1897] 2 QB 165; followed in *Hall v Duke of Norfolk* [1900] 2 Ch 493; cf *Manley v Burn* [1916] 2 KB 121, CA.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(4) SUBSIDENCE DAMAGE/(i) Common Law/194. Liability of trustees and contractors.

194. Liability of trustees and contractors.

A trustee who works a mine¹ forming part of his testator's estate is personally liable for the damage caused by subsidence to the land of an adjoining owner; but if the mine is carried on for the benefit of the trust estate and the subsidence results from a reasonable and proper course of working, he will be entitled to be indemnified out of the estate, and the adjoining owner is entitled to be paid directly from the trust estate².

Contractors, as well as principals, are liable for damage caused by the wrongful withdrawal of support³.

1 For the meaning of 'mine' see PARA 5 ante.

2 *Re Raybould, Raybould v Turner* [1900] 1 Ch 199. As to a trustee's right of indemnity see generally TRUSTS vol 48 (2007 Reissue) PARA 902 et seq.

3 *Dalton v Angus & Co* (1881) 6 App Cas 740, HL; *Jordeson v Sutton, Southcoates and Drypool Gas Co* [1898] 2 Ch 614 at 626, 627 per North J (affd [1899] 2 Ch 217, CA).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(4) SUBSIDENCE DAMAGE/(i) Common Law/195. Liability of licensees and licensors.

195. Liability of licensees and licensors.

A licensee who wrongfully withdraws support is alone liable if the licence under which he works is irrevocable; but if the licence is revocable the licensor is also liable if he knew that injury would result from the licensee's workings and he has failed to prevent the injury by revoking the licence¹.

¹ *Atkinson v King* (1878) 2 LR 1r 320 (1r CA). As to the licensing of coal-mining operations see PARA 91 et seq ante. As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(4) SUBSIDENCE DAMAGE/(i) Common Law/196. Covenants for title and quiet enjoyment.

196. Covenants for title and quiet enjoyment.

If the owner of land grants a lease of mines¹ with power to let down the surface², and subsequently transfers the surface to another, reserving the mines without power to let down the surface, with a covenant for title, the prior lease is a breach of the covenant³. Similarly, if the owner of land grants a lease of mines with power to let down the surface, and subsequently leases the surface, reserving the mines without power to let down the surface, it is possible that the lessee of the surface may recover damages against his lessor for breach of a covenant for quiet enjoyment⁴.

1 For the meaning of 'mine' see PARA 5 ante.

2 For the meaning of 'surface' see PARA 19 ante.

3 *Taylor v Shafto* (1867) 8 B & S 228, Ex Ch. The old covenants for title are not deemed to be included in any conveyance or transfer made on or after 1 July 1995 following the repeal of the Law of Property Act 1925 s 76 by the Law of Property (Miscellaneous Provisions) Act 1994 ss 10(1), 21(2), (3), Sch 2. Where a transfer of the surface is expressed to be made with full title guarantee in the circumstances described in the text, there will probably be breach of the covenant implied by the Law of Property (Miscellaneous Provisions) Act 1994 s 3(1)(b) (ie that the property is free from all other rights exercisable by third parties). Similarly if made with limited title guarantee there will probably be a breach of s 3(1)(a). See SALE OF LAND vol 42 (Reissue) PARA 350.

4 See *Markham v Paget* [1908] 1 Ch 697. In *Jones v Consolidated Anthracite Collieries Ltd and Lord Dynevor* [1916] 1 KB 123 at 136, 137, Scrutton J left the question open, and an examination of the authorities convinced him that the precise nature and limits of acts of interference not going to title and possession, which would constitute a breach of the covenant, were far from being accurately defined. In *Dennett v Atherton* (1872) LR 7 QB 316 at 327, Willes J considered that there would be no breach of the covenant if a seller or lessor had worked out mines and the purchaser or lessee were to build a house which subsided into old workings.

As to covenants for quiet enjoyment see PARA 345 post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(4) SUBSIDENCE DAMAGE/(i) Common Law/197. Effect of compensation provision.

197. Effect of compensation provision.

A provision for compensation annexed to a power to let down the surface¹ may, according to the construction of the instrument, be treated as a condition which qualifies the right to work and so binds the person exercising that right². Thus a covenant to make compensation for damage done in working so as to let down the surface has been treated not as comprising a burden running with the land but as an inherent qualification of the right to work with the effect of letting down the surface. What is in form a covenant may appear from the whole of the provisions of the instrument to be intended also to operate as a condition³. On the other hand, a covenant seems to be the more appropriate form of provision where there is no power to let down. In such circumstances, a condition has been treated as a covenant⁴.

1 For the meaning of 'surface' see PARA 19 ante.

2 *Aspden v Seddon* (1876) 1 Ex D 496, CA; *Westhoughton UDC v Wigan Coal and Iron Co Ltd* [1919] 1 Ch 159 at 174-175, CA, per Duke LJ; and see *Tito v Waddell (No 2)* [1977] Ch 106 at 296-299, 302, [1977] 3 All ER 129 at 286-289, 291 per Megarry V-C.

3 *Chamber Colliery Co Ltd v Twyerould* (1893) [1915] 1 Ch 268n at 272n, HL, per Lord Watson; and see *Tito v Waddell (No 2)* [1977] Ch 106 at 298, 302, [1977] 3 All ER 129 at 287, 291 per Megarry V-C.

4 *Jones v Consolidated Anthracite Collieries Ltd and Lord Dynevor* [1916] 1 KB 123.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(4) SUBSIDENCE DAMAGE/(i) Common Law/198. Compensation covenant runs with the land.

198. Compensation covenant runs with the land.

A covenant to pay compensation for damage by subsidence runs with the land; it is not merely collateral, but affects the nature and value of the land¹. A covenant by a mining lessee with the owner or owners, occupier or occupiers, for the time being of the surface² is effectual, even though the surface owner at the date of the demise is not named a party to the deed; it will be treated as a covenant with the surface owner at that date and, by virtue of the statutory right of persons who are not parties to an instrument to take the benefit of covenants respecting land³, will enure for the benefit of his successors in title⁴.

1 *Norval v Pascoe* (1864) 34 LJ Ch 82; *Dyson v Forster* [1909] AC 98, HL; and see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 559. The assignment of the covenant does not by itself carry with it the right to compensation for damage accrued before the assignment: *Snowdon v Ecclesiastical Comrs for England* [1935] Ch 181.

2 For the meaning of 'surface' see PARA 19 ante.

3 Ie by virtue of the Law of Property Act 1925 s 56(1). As to deeds and their execution generally see DEEDS AND OTHER INSTRUMENTS.

4 *Dyson v Forster* [1909] AC 98, HL; affg sub nom *Forster v Elvet Colliery Co Ltd* [1908] 1 KB 629, CA. As to whether a clause which exempts the mine owner from liability for injury by subsidence runs with the land see *Rowbotham v Wilson* (1860) 8 HL Cas 348 (affg (1857) 8 E & B 123); cf *Richards v Harper* (1866) LR 1 Exch 199. For the meaning of 'mine' see PARA 5 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(4) SUBSIDENCE DAMAGE/(i) Common Law/199. Right to injunction.

199. Right to injunction.

The wrongful withdrawal of support will in general entitle the injured party to an injunction¹ to restrain the defendant from further working the mines² so as to let down the surface³. However, a mandatory injunction to carry out works to restore support may be refused if it is not possible to identify the steps the defendant should take, or if the costs to the defendant are likely to be disproportionate⁴. An injunction to restrain working may prescribe no limits within which the workings are restrained⁵, and whilst in form it may presuppose the possibility of working the mines without letting down the surface⁶; nonetheless in practice, an injunction, in effect, frequently renders the mines or some part of them unworkable in a commercial sense. Where the claimant, however, is clearly entitled to the right of support, an injunction will not be refused merely on the ground that the effectual working of the mines will be rendered impracticable⁷. Where no claim of right is set up by the defendant, an injunction will not be granted, if the mining operations have been concluded⁸.

Injunctions have, in general, been granted where subsidence has already occurred and damage resulted. If the subsidence is substantial it is not necessary that pecuniary loss should be shown⁹, and it is usually no ground for declining to grant an injunction that pecuniary compensation will be a sufficient remedy¹⁰, or that the loss to the surface owner is trifling¹¹. However, an injunction is a discretionary remedy and it will be refused if it would be oppressive to grant an injunction¹². As a good working rule an injunction will usually be refused if: (1) the injury to the claimant's legal rights is small; (2) it is capable of being estimated in money; (3) it can be adequately compensated by a small money payment; and (4) it would be oppressive to the defendant to grant an injunction¹³. Instead damages in substitution for an injunction may be given¹⁴. Damages may be awarded in substitution for an injunction if it would be oppressive to grant an injunction even if the compensation payable will be substantial, where the claimant has made it clear that he is seeking a money payment¹⁵. An award of damages may reflect the fair and reasonable price which the claimant could have negotiated for an agreement to withdraw support¹⁶. Moreover, if the defendant wrongfully threatens to withdraw support, an injunction may be granted even though no subsidence has taken place¹⁷. Subsidence is recognised to be the inevitable result of mining operations in many cases, and accordingly, if it is shown that subsidence will result from the operations of the mine owner, the court will interfere for the purpose of preventing irreparable damage¹⁸.

An interim injunction will not be granted, if serious injury may result from the suspension of the mining operations¹⁹.

1 As to the right to an injunction generally see CIVIL PROCEDURE vol 11 (2009) PARA 331 et seq.

2 For the meaning of 'mine' see PARA 5 ante.

3 See *Proud v Bates* (1865) 34 LJ Ch 406; *Dugdale v Robertson* (1857) 3 K & J 695 at 696, 701; *Hunt v Peake* (1860) John 705 (land artificially burdened); *Trinidad Asphalt Co v Ambard* [1899] AC 594, PC (land in natural state). For the meaning of 'surface' see PARA 19 ante.

4 See *Redland Bricks Ltd v Morris* [1970] AC 652, [1969] 2 All ER 576, HL.

5 See *Elliot v North Eastern Rly Co* (1863) 10 HL Cas 333 at 358 per Lord Chelmsford.

6 See *Butterley Co Ltd v New Hucknall Colliery Co Ltd* [1909] 1 Ch 37 at 47, CA, per Cozens-Hardy MR; affd [1910] AC 381, HL.

7 See *Wakefield v Duke of Buccleuch* (1867) LR 4 Eq 613 at 638 per Malins V-C (affd (1870) LR 4 HL 377); *Earl of Westmoreland v New Sharlston Colliery Co Ltd* (1898) 79 LT 716 at 722 per North J (affd (1899) 80 LT 846, CA; [1904] 2 Ch 443n, HL). See also PARA 116 note 2 ante.

8 *Jordeson v Sutton, Southcoates and Drypool Gas Co* [1898] 2 Ch 614 at 628 per North J (affd [1899] 2 Ch 217, CA); *A-G v Conduit Colliery Co* [1895] 1 QB 301 at 311, DC, per Collins J.

9 See *A-G v Conduit Colliery Co* [1895] 1 QB 301 at 311, DC, per Collins J.

10 *Siddons v Short* (1877) 2 CPD 572 at 577 per Grove J.

11 *Trinidad Asphalt Co v Ambard* [1899] AC 594, PC.

12 *Jaggard v Sawyer* [1995] 2 All ER 189, [1995] 1 WLR 269, CA; *Gafford v Graham* [1999] 3 EGLR 75, CA.

13 *Shelfer v City of London Electric Lighting Co* [1895] 1 Ch 287, CA; *Jaggard v Sawyer* [1995] 2 All ER 189, [1995] 1 WLR 269, CA.

14 See note 13 supra.

15 *Gafford v Graham* [1999] 3 EGLR 75, CA.

16 *Jaggard v Sawyer* [1995] 2 All ER 189, [1995] 1 WLR 269, CA; *Attorney General v Blake (Jonathan Cape Ltd, third party)* [2001] 1 AC 268, [2000] 4 All ER 385, HL; *Amec Developments Ltd v Jury's Hotel Managment (UK) Ltd* [2001] 1 EGLR 81.

17 *Siddons v Short* (1877) 2 CPD 572.

18 See *Birmingham Corp'n v Allen* (1877) 6 ChD 284 at 288 per Jessel MR; affd 6 ChD 284 at 290, CA. See also PARA 132 note 3 ante.

19 See *Hilton v Earl Granville* (1841) Cr & Ph 283 at 297 per Lord Cottenham LC; *Wheatley v Westminster Brymbo Coal Co* (1869) LR 9 Eq 538 at 551 per Malins V-C.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(4) SUBSIDENCE DAMAGE/(i) Common Law/200. Liberty to inspect mines and plans.

200. Liberty to inspect mines and plans.

Liberty to inspect mines¹ and the working plans may be obtained on interim application if the claimant makes out a prima facie case that his right of support has been infringed². However, power to order inspection lies with the arbitrator, not with the court, where there is provision for arbitration³.

¹ For the meaning of 'mine' see PARA 5 ante.

² See *Wall v Dunn* (1876) 1 Seton's Judgments and Orders (7 Edn) 563, 564; *Baynton v Leonard* (1853) 1 Seton's Judgments and Orders (7 Edn) 565; and PARA 40 ante.

³ *Barnett v Aldridge Colliery* (1887) 4 TLR 16; and see *Vasso v Vasso* [1983] 3 All ER 211, [1983] 1 WLR 838 (affd sub nom *The Andria* [1984] QB 477, [1984] 1 All ER 1126). See also the Arbitration Act 1996 s 38(4); and ARBITRATION vol 2 (2008) PARA 1248.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(4) SUBSIDENCE DAMAGE/(ii) Statutory Compensation/A. SUBSIDENCE DAMAGE BY BRINE PUMPING/201. Compensation for subsidence damage by brine pumping.

(ii) Statutory Compensation

A. SUBSIDENCE DAMAGE BY BRINE PUMPING

201. Compensation for subsidence damage by brine pumping.

In districts where brine pumping was carried on, it was often impossible to identify the particular operations which caused or contributed to subsidence¹. In addition to local provisions in Cheshire² (where the industry was historically of particular importance), a more general means of providing compensation for damage was provided by the Brine Pumping (Compensation for Subsidence) Act 1891 which, now that brine pumping is no longer an active concern³, has been repealed.

1 Where the particular operations could be identified an action for damage caused by the unauthorised withdrawal of support could be brought in the usual way: eg see *Lotus Ltd v British Soda Co Ltd* [1972] Ch 123, [1971] 1 All ER 265.

2 See the Cheshire Brine Pumping (Compensation for Subsidence) Acts 1952 and 1964; and the Non-metropolitan Counties (Local Statutory Provisions) Order 1986, SI 1986/1133.

3 The Lion Salt Works in Marston, the last recorded open pan block salt producing works producing salt from natural brine, finally closed in 1986.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(4) SUBSIDENCE DAMAGE/(ii) Statutory Compensation/B. SUBSIDENCE DAMAGE BY COAL MINING/(A) Introduction/202. Historical background.

B. SUBSIDENCE DAMAGE BY COAL MINING

(A) INTRODUCTION

202. Historical background.

By the Coal-Mining (Subsidence) Act 1950¹ (now repealed) and the subordinate legislation made under it, obligations were placed on the National Coal Board (later renamed the British Coal Corporation)² to carry out repairs or to make payments in respect of subsidence damage to dwelling-houses caused by coal mining, and power was given to the Corporation to execute works for the prevention or reduction of such damage³. The principal object of the legislation was to remedy the perceived injustices resulting from the fact that in many areas of the country, as a result of previous dealings in the surface land and the mineral rights, coal-mining operators had the right to remove support without incurring any liability to the surface owner for damage thereby caused⁴. The type of damage and classes of property protected were extended by the Coal-Mining Subsidence Act 1957. Distinct rights to compensation or repair existed under the Coal Industry Act 1975, which conferred on the Corporation a new statutory right to withdraw support in extension of, and replacement for, rights under earlier legislation⁵.

The statutory framework for compensation for subsidence damage caused by the withdrawal of support from land in connection with coal-mining operations is now contained in the Coal Mining Subsidence Act 1991⁶, which was passed to repeal and re-enact with amendments the Coal-Mining (Subsidence) Act 1957 and certain repealed provisions of the Coal Industry Act 1975⁷. As a result of the restructuring of the coal industry under privatisation⁸, it is no longer the British Coal Corporation which owes obligations concerning compensation for subsidence damage, but the responsible person in relation to the damage⁹.

1 The Coal-Mining (Subsidence) Act 1950 (which did not apply to damage occurring after 31 July 1957: see s 18(2) (repealed)) preceded the Coal-Mining (Subsidence) Act 1957 (repealed).

2 See PARA 2 ante.

3 See the Coal-Mining (Subsidence) Act 1950 ss 1-8 (repealed).

4 See the *Report of the Royal Commission on Mining Subsidence* (Cmd 2899) (1927); and 185 HC Official Report (6th series), 4 February 1991, col 69.

5 See PARA 178 et seq ante.

6 See the Coal Mining Subsidence Act 1991 s 1 (as amended); and PARA 203 et seq post. The Act derived from recommendations of the Waddilove Committee, which was appointed by the government to review the operation of the Coal-Mining (Subsidence) Act 1957 (now repealed) and other aspects of subsidence compensation. Most of the committee's recommendations were accepted by the government in its response published in October 1987: see *The Repair and Compensation System for Coal Mining Subsidence Damage* (Cm 235) (1987).

7 Coal Mining Subsidence Act 1991, long title. Apart from the process of consolidation, many of the innovations in the Act were intended to put the previous practice of the British Coal Corporation, which went beyond strict legal obligations, onto a statutory footing: see 185 HC Official Report (6th series), 4 February 1991, cols 69-70. This had been one of the recommendations of the Waddilove Committee. As to the British Coal Corporation see PARAS 2-3 ante.

- 8 See PARAS 3, 50 et seq ante.
- 9 As to the responsible person see PARA 206 post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(4) SUBSIDENCE DAMAGE/(ii) Statutory Compensation/B. SUBSIDENCE DAMAGE BY COAL MINING/(A) Introduction/203. The Coal Mining Subsidence Act 1991.

203. The Coal Mining Subsidence Act 1991.

The main purpose of the Coal Mining Subsidence Act 1991¹ is to place obligations on the responsible person² to take remedial action³ in respect of subsidence damage to which the Act applies⁴. Remedial action may take the form of the execution of remedial works⁵, payments in lieu⁶ or depreciation payments⁷, subject to provisions as to the determination of the appropriate remedial action in a particular case⁸. The responsible person is also under a duty to make payments in respect of emergency works executed by other persons⁹.

Additional remedies include provision for cases where dwelling-houses are rendered uninhabitable, and compensation for inconvenience during works¹⁰, provision for agricultural losses¹¹, provision for the purchase of property affected by blight¹², compensation for consequential losses of small firms¹³, and for damage to moveable property¹⁴, and compensation for death or disablement¹⁵. Special provisions apply in the case of ancient monuments and listed buildings¹⁶, ecclesiastical property¹⁷ and property belonging to protected tenants¹⁸.

The Act also includes provisions to deal with cases where further damage is likely¹⁹. It empowers responsible persons to execute preventive measures in respect of buildings, structures or works²⁰ and enables drainage authorities to require the execution of such works²¹. It contains provision for the avoidance of double claims²², for the reimbursement of successful claimants expenses²³, for the resolution of disputes²⁴ and for notices, information and reports²⁵.

The Act preserves a distinct right to compensation in certain cases where special terms and conditions as to compensation remain applicable to damage caused by the working of coal in the exercise of statutory rights to withdraw support²⁶.

The Coal Industry Act 1994²⁷, in addition to adapting the Coal Mining Subsidence Act 1991 to the requirements of the privatised coal industry²⁸, contains additional provisions relating to responsible persons²⁹, a subsidence adviser³⁰, and the resolution of disputes³¹. It also creates offences relating to the provision of subsidence information³².

1 Coal Mining Subsidence Act 1991 s 54(1). The Act came into force on 30 November 1991: see s 54(2); and the Coal Mining Subsidence Act 1991 (Commencement) Order 1991, SI 1991/2508. The Coal Mining Subsidence Act 1991 does not apply to Northern Ireland: s 54(4). The Act makes various transitional provisions, savings and repeals: see ss 53, 54(3), Sch 7 (as amended); Sch 8. In particular it repeals the Coal-Mining (Subsidence) Act 1957 (see the Coal Mining Subsidence Act 1991 Sch 8) and makes special provision where, before 30 November 1991, a notice or claim has been made in respect of subsidence damage under the Coal-Mining (Subsidence) Act 1957 (see the Coal Mining Subsidence Act 1991 Sch 7 paras 1, 2 (amended by the Coal Industry Act 1994 s 67(1), Sch 9 para 41(5))).

2 As to the responsible person see PARA 206 post.

3 As to remedial action see PARA 211 post.

4 For the meaning of 'subsidence damage' see PARA 205 post.

5 See PARA 214 post.

6 See PARAS 216-218 post.

7 See PARAS 219-222 post.

- 8 See PARA 213 post.
- 9 See PARA 223 post.
- 10 See PARAS 230-233 post.
- 11 See PARAS 234-236 post.
- 12 See PARAS 237-238 post.
- 13 See PARA 239 post.
- 14 See PARA 240 post.
- 15 See PARA 241 post.
- 16 See PARA 227 post. As to the protection of ancient monuments generally see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1002 et seq. As to listed buildings generally see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1091 et seq.
- 17 See PARA 228 post.
- 18 See PARA 229 post.
- 19 See PARAS 224-226 post.
- 20 See PARA 242 post.
- 21 See PARA 243 et seq post.
- 22 See PARA 247 post.
- 23 See PARA 249 post.
- 24 See PARAS 251-252 post.
- 25 See PARAS 253-255 post.
- 26 See PARA 250 post.
- 27 See PARA 50 et seq ante.
- 28 As to the restructuring of the coal industry under privatisation see PARAS 3, 50 et seq ante.
- 29 See PARA 209 post.
- 30 See PARA 210 post.
- 31 See PARAS 251-252 post.
- 32 See PARA 256 post.

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204. The Secretary of State's power to make regulations or orders.

Any power of the Secretary of State¹ to make regulations or orders under the Coal Mining Subsidence Act 1991² is exercisable by statutory instrument³ and includes power to make different provision for different cases or classes of case⁴, and to make such supplementary, incidental, consequential or transitional provisions as the Secretary of State considers necessary or expedient⁵.

1 As to the Secretary of State see PARA 4 ante. The Coal Mining Subsidence Act 1991 refers to the possibility of the Secretary of State and the Minister of Agriculture, Fisheries and Food acting jointly (see the Coal Mining Subsidence Act 1991 s 50(3)), but the Ministry of Agriculture, Fisheries and Food has been dissolved and the minister's functions have been transferred to the Secretary of State for Environment, Food and Rural Affairs (see the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794; and PARA 4 ante).

As to regulations made in relation to land drainage systems see the Coal Mining Subsidence Act 1991 s 36(7); and PARAS 243-245 post.

2 See the Coal Mining Subsidence Act 1991 (Commencement) Order 1991, SI 1991/2508 (see PARA 203 ante); the Coal Mining Subsidence (Notices and Claims) Regulations 1991, SI 1991/2509 (see PARAS 212, 216, 231, 234 post); the Coal Mining Subsidence (Preventive Measures and Rates of Interest) Order 1991, SI 1991/2510 (see PARA 219 post); the Coal Mining Subsidence (Subsidence Adviser) Regulations 1994, SI 1994/2563 (see PARA 210 post); the Coal Mining Subsidence (Blight and Compensation for Inconvenience During Works) Regulations 1994, SI 1994/2564 (see PARAS 233, 237 post); the Coal Mining Subsidence (Provision of Information) Regulations 1994, SI 1994/2565 (see PARAS 209, 253 post); the Coal Mining Subsidence (Arbitration Schemes) Regulations 1994, SI 1994/2566 (see PARA 252 post); and the Coal Mining Subsidence (Land Drainage) Regulations 1994, SI 1994/3064 (see PARAS 244-245 post).

3 A statutory instrument containing any regulations or order under the Coal Mining Subsidence Act 1991 (other than an order under s 54(2) bringing the Act into force: see PARA 204 ante) is subject to annulment in pursuance of a resolution of either House of Parliament: s 50(2).

4 Ibid s 50(1)(a).

5 Ibid s 50(1)(b). As to the exercise of any power to make subordinate legislation under the Coal Mining Subsidence Act 1991 before the restructuring date (ie 31 October 1994: see PARA 3 note 9 ante) see the Coal Industry Act 1994 s 67(7), Sch 10 para 13(3).

UPDATE

204 The Secretary of State's power to make regulations or orders

NOTE 2--SI 1994/2563 revoked: SI 2004/2241.

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(B) SUBSIDENCE

205. Subsidence damage.

Subsidence damage is any damage¹ to land, or to any buildings², structures³ or works on, in or over it, caused by the withdrawal of support⁴ from land in connection with⁵ lawful coal-mining operations⁶. References in the Coal Mining Subsidence Act 1991 to subsidence damage do not apply to damage caused in connection with the working and getting of coal⁷ and other minerals⁸ (1) where the working and getting of the coal was ancillary to the working of the other minerals; or (2) where the coal was worked or gotten by virtue of the grant of a gale in the Forest of Dean or any other part of the Hundred of St Briavels in Gloucester⁹. Nor do such references apply to damage occurring underground in a mine¹⁰ of coal¹¹.

Where in any proceedings¹² the question arises whether any damage to property is subsidence damage, and it is shown that the nature of the damage and the circumstances are such as to indicate that the damage may be such, the onus is on the responsible person¹³ to show that the damage is not subsidence damage¹⁴.

1 An alteration of the level or gradient of any land not otherwise damaged which does not affect its fitness for use for the purposes for which, immediately before the alteration occurred, it was used, or might reasonably have been expected to be used, is not regarded as damage for these purposes: Coal Mining Subsidence Act 1991 s 1(2).

2 'Building' is not defined in the Coal Mining Subsidence Act 1991; but see *Stevens v Gourley* (1859) 7 CBNS 99 at 112; *Cheshire County Council v Woodward* [1962] 2 QB 126, [1962] 1 All ER 517.

3 'Structure' includes any works providing passage or hard standing for persons, animals or vehicles (including railway or tramway vehicles and aircraft): Coal Mining Subsidence Act 1991 s 52(1). 'Works' includes sewers, drains, pipes, cables, wires and any other apparatus: s 52(1).

4 Withdrawal of support is not necessarily confined to active operations and may include a passive withdrawal caused by the natural movement of infill downwards into the unfilled part of a shaft: see *British Coal Corp v Netherlee Trustees* 1995 SLT 1038, Inner House. As to the statutory right to withdraw support from land in relation to coal mining see PARA 178 et seq ante.

5 The words 'in connection with' may have a wider meaning than 'caused by' or 'resulting from': see *British Coal Corp v Netherlee Trustees* 1995 SLT 1038, Inner House.

6 Coal Mining Subsidence Act 1991 ss 1(1), 52(1). In so far as s 1 relates to operations carried on at any time on or after the restructuring date (ie 31 October 1994: see PARA 3 note 9 ante), 'lawful coal-mining operations' means any coal-mining operations to which the Coal Industry Act 1994 s 25 (see PARA 91 ante) applies (including operations carried on in contravention of s 25(1) and those that are actionable apart from the Coal Mining Subsidence Act 1991) which: (1) are carried on by a person who is for the time being a licensed operator; or (2) are carried on by a person who has been such a licensed operator and in continuation of operations begun by that person before he ceased to be such an operator: s 1(3) (substituted by the Coal Industry Act 1994 s 42(1)). However, for these purposes any operations carried on or begun by any person as a person who is for the time being authorised to carry on coal-mining operations on behalf of a person who is or has been a licensed operator are to be treated as carried on or begun by the latter person, whether or not the authorisation extends to the operations in question: Coal Mining Subsidence Act 1991 s 1(3) (as so substituted). As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante; and for the meaning of 'licensed operator' see PARA 60 note 12 ante.

In relation to operations carried on before the restructuring date, the provision contained in s 1 (as originally enacted) is important as preserving liability for historic subsidence liabilities. In this case, 'lawful coal-mining

operations' means the lawful working and getting of coal, or of coal and other minerals worked with coal, or the lawful getting of any product from coal in the course of working it: s 1(3) (as originally enacted).

7 For the meaning of 'coal' see PARA 1 note 7 ante (definition applied by the Coal Mining Subsidence Act 1991 s 52(1)). As to the Coal Commission see PARA 1 ante.

8 For the meaning of 'minerals' see PARA 12 ante.

9 Coal Mining Subsidence Act 1991 s 1(4)(a). As to mining in Gloucestershire see PARA 608 et seq post.

10 For the meaning of 'mine' see PARA 5 note 14 ante (definition applied by ibid s 1(4)(b)).

11 Ibid s 1(4)(b).

12 Ie under the Coal Mining Subsidence Act 1991: see s 40(2). As to the determination of disputes see PARAS 251-252 post.

13 As to the responsible person see PARA 206 post.

14 Coal Mining Subsidence Act 1991 s 40(2). This provision applies for the purpose of determining questions under the Coal Industry Act 1994 s 47(1) (see PARAS 251-252 post) as it applies for determining questions under the Coal Mining Subsidence Act 1991: Coal Industry Act 1994 s 47(3).

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206. Persons responsible for subsidence.

The responsible person¹, in relation to any subsidence damage², is:

- 92 (1) the person with responsibility for subsidence affecting the land which has been damaged or the damaged part of it³; or
- 93 (2) in the case of damage to other property, the person with responsibility for subsidence affecting the land where that property or the damaged part of it was situated at the time of the damage⁴.

Where the land is for the time being within the area of responsibility⁵ of any person as the holder⁶ of a licence under Part II of the Coal Industry Act 1994⁷, the person with responsibility for subsidence affecting that land is the licence holder⁸. In any other case, the Coal Authority has responsibility for subsidence⁹.

A person is the responsible person in relation to any subsidence damage whether that damage was caused or occurred before or after the time when he became the person with responsibility for subsidence affecting the land in question¹⁰. Accordingly, where¹¹ any person becomes the person with responsibility for subsidence affecting any land (the 'successor'), all the rights and liabilities¹² of the successor's predecessor as the person with such responsibility (the 'predecessor'¹³) are transferred, by virtue only of his becoming the person with responsibility, to the successor; and anything which has been done under or for any of the purposes of the Coal Mining Subsidence Act 1991 or regulations made under it by or in relation to the predecessor, or is deemed to have been so done, is deemed¹⁴ to have been done by or in relation to the successor¹⁵. It is the duty of the person who becomes¹⁶ the person with responsibility affecting any land to take all reasonable steps to secure that the change in the person with that responsibility does not result in any undue delay in the performance of any obligations falling by virtue of that change to be performed by that person¹⁷.

1 The Coal Mining Subsidence Act 1991 refers throughout to the British Coal Corporation (as to which see PARAS 2-3 ante). However, except where the Coal Industry Act 1994 s 43(8), Sch 6 otherwise provides, the Coal Mining Subsidence Act 1991 and the regulations under it which were in force immediately before the restructuring date (ie 31 October 1994: see PARA 3 note 9 ante) have effect since that date with the substitution, in relation to any subsidence damage, for references to the Corporation of references to the person who is the responsible person in relation to that damage: Coal Industry Act 1994 s 43(1). Note that this provision does not apply to the references to the Corporation in the Coal Mining Subsidence Act 1991 s 53(1), Sch 7 (transitional provisions) so far as it has effect in relation to times before the restructuring date: Coal Industry Act 1994 Sch 6 para 12. As to the restructuring of the British Coal Corporation's undertaking see PARA 72 et seq ante.

2 For the meaning of 'subsidence damage' see PARA 205 ante.

3 Coal Industry Act 1994 s 43(2)(a). Section 43(2) is subject to ss 43(3)-(8), 44: s 43(2).

4 Ibid s 43(2)(b); and see note 3 supra.

5 As to the area of responsibility see PARA 207 post.

6 For the meaning of 'holder' see PARA 94 note 7 ante.

7 Ie the Coal Industry Act 1994 Pt II (ss 25-36) (as amended): see PARA 91 et seq ante.

8 Ibid s 43(3)(a).

9 Ibid s 43(3)(b). As to the Coal Authority see PARA 52 et seq ante.

10 Ibid s 43(4).

11 Ie by virtue of any designation or of any transfer of rights and obligations or of the operation of any such provision as is mentioned in ibid s 37(3) (see PARA 207 post): see s 43(5).

12 Ie under the Coal Mining Subsidence Act 1991 or under any regulations made under it or the Coal Industry Act 1994 Pt II: see s 43(5). As to the meaning of 'liability' see PARA 50 note 4 ante.

13 Ibid s 43(5), (6) has effect in relation to the coming into force of s 43(1) on the restructuring date (ie 31 October 1994: see PARA 3 note 9 ante) as it has effect in relation to any other transfer of rights and obligations but as if the references to the predecessor were references to the British Coal Corporation: s 43(7). As to the British Coal Corporation see PARAS 2-3 ante.

14 Ie so far as necessary for that purpose and for the purposes of the continuation by or against the successor of any proceedings under or for the purposes of the Coal Mining Subsidence Act 1991 or those regulations: see the Coal Industry Act 1994 s 43(5).

15 Ibid s 43(5); and see note 13 supra.

16 Ie under ibid s 43(5): see the text to notes 11-14 supra.

17 Ibid s 43(6); and see note 13 supra.

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207. Areas of responsibility.

A licence under Part II of the Coal Industry Act 1994¹ may designate, in relation to its holder², the area which is to be treated³ as that person's area of responsibility⁴. An area so designated may comprise:

- 94 (1) the whole or any one or more parts of the area where the operations to which the licence relates are to be carried on⁵; or
- 95 (2) the whole or any parts of that area together with such other areas appearing to the Coal Authority⁶ to be capable of being affected by those operations as may be described in the licence⁷.

An area designated as an area of responsibility, except so far as it may be modified in accordance with any condition contained in the licence⁸, continues to be treated⁹ as the area of responsibility of the holder of the licence in question until such time as may be determined, in accordance with the provisions of the licence, to be the time for responsibilities in respect of the designated area to revert (subject to any further designation of the whole or any part of that area) to the Coal Authority¹⁰.

1 Ie the Coal Industry Act 1994 Pt II (ss 25-36) (as amended): see PARA 91 et seq ante.

2 For the meaning of 'holder' see PARA 94 note 7 ante.

3 Ie for the purposes of the Coal Industry Act 1994 Pt III (ss 37-56) (as amended): see s 37(1).

4 Ibid s 37(1).

5 Ibid s 37(2)(a).

6 As to the Coal Authority see PARA 52 et seq ante.

7 Coal Industry Act 1994 s 37(2)(b).

8 The conditions included in a licence may provide for the modification from time to time of the area of responsibility of the holder of the licence: *ibid* s 37(4).

9 Ie for the purposes of *ibid* Pt III: see s 37(3).

10 Ibid s 37(3). For these purposes it is immaterial that the authorisation contained in the licence in question is revoked or otherwise ceases to have effect before the time so determined: s 37(5).

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208. Cases where there is more than one responsible person.

Where, in the case of any subsidence damage¹, the area of responsibility² of any person as holder³ of a licence under Part II of the Coal Industry Act 1994⁴ includes only part of the damaged land⁵ or, as the case may be, of the land where the damaged property⁶ was situated, then the responsible persons in relation to that damage are that person, together with every other person within whose area of responsibility any part of that land is situated, and if any part of that land is not situated within the area of responsibility of any person, the Coal Authority⁷; and the obligations and liabilities⁸ of the responsible person are imposed jointly and severally on those persons⁹.

The rules relating to the transfer of rights and liabilities¹⁰ which apply where one person succeeds to the position of another as responsible person are modified where a person ceases at any time to be the person with responsibility for subsidence affecting any land but continues, after that time, to be the person with responsibility for subsidence affecting other land¹¹; and both the predecessor and the successor are responsible persons in relation to any subsidence damage to which any of the predecessor's rights or liabilities relate¹². In any such case, the rights and liabilities of the predecessor, so far as they relate to subsidence damage in relation to which the predecessor continues to be a responsible person, continue to be vested in the predecessor, as well as being vested in the successor¹³. The general rules as to the transfer of rights and liabilities¹⁴ do not authorise the continuation against the successor of any proceedings¹⁵ which have been begun, or are deemed to have been begun, against the predecessor, and may be continued against the predecessor¹⁶.

These provisions¹⁷, so far as they relate to obligations, liabilities or rights of responsible persons, also apply as respects obligations, liabilities or rights¹⁸ of persons who would be responsible persons if subsidence damage occurred¹⁹.

1 For the meaning of 'subsidence damage' see PARA 205 ante.

2 As to the area of responsibility see PARA 207 ante.

3 For the meaning of 'holder' see PARA 94 note 7 ante.

4 Ie the Coal Industry Act 1994 Pt II (ss 25-36) (as amended): see PARA 91 et seq ante.

5 This reference to the damaged land is a reference, where only part of the land has been damaged, to the damaged part of that land: *ibid* s 44(4).

6 This reference to the damaged property is a reference, where only part of the property has been damaged, to the damaged part of that property: *ibid* s 44(4).

7 See *ibid* s 44(1)(a). As to the Coal Authority see PARA 52 et seq ante.

8 Ie by virtue of *ibid* s 43 (see PARA 206 ante): see s 44(1).

9 See *ibid* s 44(1)(b).

10 Ie those contained in *ibid* s 43(5) (see PARA 206 ante): see s 44(2).

11 *Ibid* s 44(2)(a).

12 Ibid s 44(2)(b).

13 Ibid s 44(3)(a).

14 See note 10 supra.

15 Ie under or for the purposes of the Coal Mining Subsidence Act 1991: see the Coal Industry Act 1994 s 44(3)(b).

16 Ibid s 44(3)(b). This provision is without prejudice to any rules of court in accordance with which the successor may be joined as a party to any proceedings in respect of any such rights or liabilities as are mentioned in s 44(3)(a): s 44(3) proviso.

17 Ie ibid s 44: see s 43(8), Sch 6 para 9.

18 Ie those arising under modifications made to the Coal Mining Subsidence Act 1991 by the Coal Industry Act 1994 Sch 6 paras 6, 8: Sch 6 para 9.

19 Ibid Sch 6 para 9. For that purpose, references in s 44 to subsidence damage are to be construed accordingly: Sch 6 para 9.

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209. Information to be provided by responsible persons.

The Secretary of State¹ may make provision by regulations² imposing requirements on a person with responsibility for subsidence affecting any land³ to:

- 96 (1) furnish information, on request⁴, to the owner⁵ or occupier of any part of that land⁶;
- 97 (2) furnish information to the Coal Authority⁷ about any such request for information relating to, or to the possibility of, subsidence damage⁸ as is made otherwise than by the owner or occupier of any part of that land⁹;
- 98 (3) notify a person who has made a request for information that it has been forwarded to the Authority¹⁰; and
- 99 (4) ensure that certain forms and documents accompany the information furnished¹¹.

Such regulations may contain such provision as the Secretary of State thinks fit with respect to the descriptions of information to which any request made for the purposes of any such regulations is to be confined, and the particulars to be included in, or omitted from, information so furnished¹².

1 As to the Secretary of State see PARA 4 ante.

2 See the Coal Mining Subsidence (Provision of Information) Regulations 1994, SI 1994/2565; and notes 6-11 infra. The provisions of the Coal Mining Subsidence Act 1991 dealing with the Secretary of State's power to make regulations and orders (see s 50; and PARA 204 ante) apply in relation to the power to make regulations under the Coal Industry Act 1994 s 45 as they apply in relation to that power under the Coal Mining Subsidence Act 1991: Coal Industry Act 1994 s 45(3).

3 As to the responsible person see PARA 206 ante.

4 'Request' means a request in writing: Coal Mining Subsidence Act 1991 s 52(1).

5 'Owner', in relation to any real property in England and Wales, means the lessee under the ground lease if it is held on such a lease, and the owner of the fee simple if it is not: *ibid* s 52(1) (definition applied by the Coal Industry Act 1994 s 45(3)). 'Ground lease' means a lease for building purposes at a rent (or, where the rent varies, at a maximum rent) which does not substantially exceed the rent which a tenant might reasonably have been expected, at the date when the lease was granted, to pay for the land comprised in the lease, excluding any buildings, for a term equal to the term created by the lease: Coal Mining Subsidence Act 1991 s 52(1) (definition as so applied).

6 See the Coal Industry Act 1994 s 45(1)(a); and the Coal Mining Subsidence (Provision of Information) Regulations 1994, SI 1994/2565, regs 4, 5.

Where a request is made of a person with responsibility which satisfies the requirements in heads (a)-(d) infra, that person must, within 14 days beginning with the date on which the request is received, furnish in writing to the person who made the request the information in heads (1)-(4) infra, unless not more than 30 days before that request was made, a similar request was made on behalf of the same person to the same person with responsibility who responded: reg 4(1), (2). The requirements are:

- 50 (1) the full name and address of the person with responsibility referred to in head (d) infra (or where an employee or agent of the person with responsibility is appointed to represent him in his dealings with the inquirer in relation to subsidence damage, the name of that employee or agent) (reg 5(1)(a), (2)(a));

- 51 (2) the place or places of business at which that person may be contacted during normal business hours (or where an employee or agent of the person with responsibility is appointed to represent him in his dealings with the inquirer in relation to subsidence damage, the employee's or agent's place of business at which he may be contacted during normal business hours) (reg 5(1)(b), (2)(b));
- 52 (3) any telephone or facsimile transmission number for communicating with that person at every such place (or where an employee or agent of the person with responsibility is appointed to represent him in his dealings with the inquirer in relation to subsidence damage, the employee's or agent's telephone or facsimile transmission number) (reg 5(1)(c), (2)(b)); and
- 53 (4) a copy of the document known as '*Coal Mining Subsidence Damage - a Guide to Claimants' Rights*' as for the time being issued by the Secretary of State (as to whom see PARA 4 ante) (Coal Mining Subsidence (Provision of Information) Regulations 1994, SI 1994/2565, reg 5(3)).

A request satisfies the requirements if it:

- 54 (a) is a request for information relating to, or to the possibility of, subsidence damage (reg 4(3)(a));
- 55 (b) is accompanied by the provision of the address of the person making the request (reg 4(3)(b));
- 56 (c) is made by, or on behalf of, a person appearing to be the owner or occupier of any land (reg 4(3)(c)); and
- 57 (d) is made of a person with responsibility for subsidence affecting the whole or any part of the land appearing to be owned or occupied by the person by, or on whose behalf, the request is made (reg 4(3)(d)).

'Person with responsibility' means, in relation to any land, the person who would be the responsible person in relation to any subsidence damage to that land if such damage were to result from any underground coal-mining operations: reg 1(2). 'Address' means, in the case of a body corporate, the address of its registered or principal office; and in the case of any other person, the address of his usual place of business: reg 1(2).

7 As to the Coal Authority see PARA 52 et seq ante.

8 For the meaning of 'subsidence damage' see PARA 205 ante.

9 See the Coal Industry Act 1994 s 45(1)(b); and the Coal Mining Subsidence (Provision of Information) Regulations 1994, SI 1994/2565, regs 6, 7. Where a request is made of a person with responsibility which complies with note 6 heads (a), (b) but not (d) supra (reg 6(2)), that person must, within 14 days beginning with the date on which he received it:

- 58 (1) notify the Authority of the request (reg 6(1)(a));
- 59 (2) furnish the Authority in writing with the following information:
 6. (a) the name and address of the person making the request as supplied by that person (regs 6(1)(b), 7(a));
5
 6. (b) details of any telephone or facsimile transmission number supplied by the person making the request (regs 6(1)(b), 7(b));
6
 7. (c) details of the request including whether it was expressed to relate to actual subsidence damage, the possibility of such damage or otherwise (regs 6(1)(b), 7(c)); and
7
 8. (d) such documents as the person making the request has furnished to the person of whom the request is made, including copies of any correspondence furnished by him (regs 6(1)(b), 7(d)); and
8
- 60 (3) notify the person making the request that the Authority has been informed of it (reg 6(1)(c)).

A request satisfies the requirements of reg 7 (whether it is made orally or in writing) if it complies with note 6 heads (a) and (b) supra but does not comply with note 6 head (d) supra: reg 6(2).

10 Coal Industry Act 1994 s 45(1)(c).

11 See *ibid* s 45(1)(d); and the Coal Mining Subsidence (Provision of Information) Regulations 1994, SI 1994/2565, regs 5, 7.

12 See the Coal Industry Act 1994 s 45(2).

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210. The subsidence adviser.

The Secretary of State¹ may by regulations² make such provision as he considers necessary or expedient (1) for the appointment of an independent person known as 'the subsidence adviser' to carry out, in prescribed³ cases, specified functions⁴; and (2) for regulating and facilitating the carrying out of those functions by the subsidence adviser⁵. These functions are:

- 100 (a) the provision of advice and assistance to persons⁶ in connection with the making of complaints, or the taking of any other steps, in relation to any matter arising under the Coal Mining Subsidence Act 1991 or certain questions⁷ which may be referred to the Lands Tribunal⁸;
- 101 (b) the making to persons with responsibility for subsidence affecting land of recommendations as to the manner in which they conduct themselves where such a matter has arisen or any such question falls to be determined⁹;
- 102 (c) the making of reports dealing generally with the way in which persons with responsibility for subsidence affecting land conduct themselves where such matters arise or such questions fall to be determined¹⁰; and
- 103 (d) the making of reports about the carrying out by the subsidence adviser of his functions¹¹.

Such regulations may also require the subsidence adviser to publish his recommendations and reports¹², and to give persons concerned with any matter being handled by him opportunities for making representations and objections¹³. The Coal Authority¹⁴ must furnish the subsidence adviser with all the information and assistance he reasonably requires in any case in which the Authority is the person with responsibility for subsidence affecting the land in question¹⁵.

The Secretary of State may by regulations make provision for the expenses incurred by the subsidence adviser in carrying out his functions, and his remuneration, to be met, in whole or in part, by some or all of the persons with responsibility for subsidence affecting land or in another prescribed manner¹⁶. Provision may be made for any matter to which the regulations relate to be determined by the Authority¹⁷. Provision may also be made, where any expenses are to be met by the Authority in accordance with the regulations, for amounts to be recoverable by the Authority from other persons with responsibility for subsidence affecting land¹⁸.

1 As to the Secretary of State see PARA 4 ante.

2 See the Coal Mining Subsidence (Subsidence Adviser) Regulations 1994, SI 1994/2563. As to the Secretary of State's power to make regulations or orders see PARA 204 ante.

3 For these purposes, 'prescribed' means prescribed by regulations under the Coal Industry Act 1994 s 46, and the Coal Mining Subsidence Act 1991 s 50 (see PARA 204 ante) applies in relation to the powers to make regulations under the Coal Industry Act 1994 s 46 as it applies in relation to any power of the Secretary of State to make regulations under the Coal Mining Subsidence Act 1991: Coal Industry Act 1994 s 46(7). The supplementary, incidental and transitional provision that may be contained, by virtue of s 46(7), in regulations under s 46 may include transitional provision in relation to matters arising under the Coal Mining Subsidence Act 1991 at times before the restructuring date (ie 31 October 1994: see PARA 3 note 9 post): Coal Industry Act 1994 s 46(8).

4 Ibid s 46(1)(a); Coal Mining Subsidence (Subsidence Adviser) Regulations 1994, SI 1994/2563, reg 2. The functions referred to are those specified in the Coal Industry Act 1994 s 46(2) (see the text to notes 6-11 *infra*): see s 46(1)(a). The Secretary of State must appoint such persons as he considers appropriate to the service of the subsidence adviser: Coal Mining Subsidence (Subsidence Adviser) Regulations 1994, SI 1994/2563, reg 2(2).

5 Coal Industry Act 1994 s 46(1)(b).

6 Ie other than those with responsibility for subsidence affecting land: see *ibid* s 46(2)(a).

7 Ie those which fall within *ibid* s 47(1) (see *PARA 251 post*): see s 46(2)(a).

8 Ibid s 46(2)(a). As to the Lands Tribunal see *COMPULSORY ACQUISITION OF LAND* vol 18 (2009) *PARA 720 et seq.* The subsidence adviser must provide to persons, other than responsible persons, who request it information relating to: (1) the obligations imposed on responsible persons by the subsidence provisions; and (2) the procedures for the making and discharge of claims under the subsidence provisions and the discharge by responsible persons of other obligations imposed by those provisions: Coal Mining Subsidence (Subsidence Adviser) Regulations 1994, SI 1994/2563, reg 3(1). Such information includes information as to the identity of persons with responsibility for subsidence damage affecting particular land: reg 3(2). The subsidence adviser must also assist persons, other than responsible persons, with complaints by investigating and providing advice as to the courses of action available to them pending the outcome of the investigation: see reg 4. A complaint is of a kind to which reg 4 applies if it is a complaint made to a responsible person that he (a) has consistently failed to comply with subsidence requirements (as to which see the Coal Industry Act 1994 s 47(9); and *PARA 251 post*); (b) in the course of complying with a subsidence requirement has caused damage or an unreasonable degree of inconvenience to any person; or (c) has been guilty of unreasonable delay in taking any step required to be taken by him under the subsidence requirements or has otherwise been guilty of maladministration in the discharge of his obligations under those requirements, and it does not constitute a question referred by the complainant to the Lands Tribunal or to arbitration under the Coal Mining Subsidence Act 1991 s 40 (see *PARA 241 post*) or the Coal Industry Act 1994 s 47 (see *PARA 241 post*): Coal Mining Subsidence (Subsidence Adviser) Regulations 1994, SI 1994/2563, regs 1(2), 4(2). As to the manner of the investigation see reg 4(3)-(6).

9 Coal Industry Act 1994 s 46(2)(b); and see the Coal Mining Subsidence (Subsidence Adviser) Regulations 1994, SI 1994/2563, reg 5.

10 Coal Industry Act 1994 s 46(2)(c); and see the Coal Mining Subsidence (Subsidence Adviser) Regulations 1994, SI 1994/2563, reg 6.

11 Coal Industry Act 1994 s 46(2)(d); and see the Coal Mining Subsidence (Subsidence Adviser) Regulations 1994, SI 1994/2563, reg 6.

12 Coal Industry Act 1994 s 46(3)(a).

13 Ibid s 46(3)(b).

14 As to the Coal Authority see *PARA 52 et seq ante*.

15 Coal Industry Act 1994 s 46(4).

16 Ibid s 46(5). As to the subsidence adviser's costs see the Coal Mining Subsidence (Subsidence Adviser) Regulations 1994, SI 1994/2563, reg 7.

17 See the Coal Industry Act 1994 s 46(6)(a).

18 See *ibid* s 46(6)(b).

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(C) REMEDIAL ACTION

(a) In general

UPDATE

210 The subsidence adviser

NOTES--SI 1994/2563 revoked: 2004, SI 2004/2241.

211. The duty to take remedial action.

The responsible person¹ is under a duty, in respect of subsidence damage² to any property, to take remedial action of one or more of the following kinds³:

- 104 (1) the execution of remedial works⁴;
- 105 (2) the making of payments⁵ in respect of the cost of remedial works executed by some other person⁶; and
- 106 (3) the making of a payment⁷ in respect of the depreciation in the value of the damaged property⁸.

Where emergency works are executed by any other person, the responsible person is also under a duty⁹ to make a payment¹⁰ in respect of the cost of those works¹¹.

1 As to the responsible person see PARA 206 ante.

2 For the meaning of 'subsidence damage' see PARA 205 ante.

3 Coal Mining Subsidence Act 1991 s 2(1). This is subject to the provisions of Pt II (ss 2-21) (as amended): see s 2(1). References in the Coal Mining Subsidence Act 1991, in relation to any subsidence damage, to the responsible person's remedial obligation are references to their obligation under s 2(1): ss 2(3), 52(1).

4 Ibid s 2(2)(a). The remedial works referred to are those executed in accordance with s 7 (see PARA 215 post): s 2(2)(a). As to the schedule of remedial works see PARA 214 post.

5 I.e. payments in lieu under ibid s 8 (see PARA 218 post) or s 9 (see PARA 217 post): see s 2(2)(b).

6 Ibid s 2(2)(b).

7 I.e. depreciation payments under ibid s 10 (as amended) (see PARA 221 post) or s 11 (see PARA 220 post): see s 2(2)(c).

8 Ibid s 2(2)(c).

9 This is subject to the provisions of ibid Pt II (as amended): see s 2(4).

10 I.e. in accordance with ibid s 12 (see PARA 223 post): see s 2(4).

11 Ibid s 2(4).

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212. Notice of subsidence damage.

The statutory remedies¹ are not available in respect of subsidence damage² to any property unless the owner³ of the property or some other person who is liable to make good the damage in whole or in part has given to the responsible person⁴ the required notice⁵ with respect to the damage within the required period⁶, and has afforded such person reasonable facilities to inspect the property, so far as he was in a position to do so⁷. The required notice with respect to any subsidence damage is a notice stating that the damage has occurred and containing prescribed particulars⁸.

As soon as reasonably practicable after receiving a damage notice or, where he receives two or more such notices in respect of the same damage, after receiving the first of them, the responsible person must give to the claimant⁹, and to any other person interested¹⁰, a notice indicating whether or not he agrees that he has a remedial obligation¹¹ in respect of the whole or any part of the damage specified in the damage notice¹². Where the responsible person gives such a notice¹³ indicating his agreement that he has such an obligation, he must also give to the claimant, and to any other person interested, a notice (1) stating the kind of remedial action available for meeting that obligation and, if more than one, which of them the responsible person proposes to take¹⁴; and (2) in the case of a notice stating that the responsible person proposes to execute remedial works with respect to any damage, informing the claimant or that person that, if he makes a request¹⁵, the responsible person may elect to make a payment in lieu¹⁶ instead of executing the works¹⁷. Where the responsible person accedes to such a request, he must give to the claimant and any other person interested a revised notice¹⁸ stating that he proposes to elect to make a payment in lieu instead of executing the works¹⁹.

Where a damage notice²⁰ is received by a person with responsibility for subsidence affecting any land, and that person is neither the Coal Authority²¹ nor the person who is or would be the responsible person in relation to the damage with respect to which the notice is given, the person who has received the notice must, as soon as reasonably practicable after receiving it, forward the notice to the Authority²². Where a damage notice is received by the Authority²³, and the Authority is not itself the person who is or would be the responsible person in relation to the damage with respect to which the notice is given, the Authority must, as soon as reasonably practicable after receiving it, forward the notice to the person appearing to the Authority to be the person who is or would be the responsible person in relation to that damage²⁴.

1 le the remedies under the Coal Mining Subsidence Act 1991 s 2(1) or s 2(4) (see PARA 211 ante): see s 3(1).

2 For the meaning of 'subsidence damage' see PARA 205 ante.

3 For the meaning of 'owner' see PARA 209 note 5 ante.

4 As to the responsible person see PARA 206 ante.

5 'Notice' means notice in writing; and 'notify' is to be construed accordingly: Coal Mining Subsidence Act 1991 s 52(1). References, in relation to any damage, to a notice affecting the required remedial action in respect of the damage are references to: (1) any notice of proposed remedial action with respect to that damage; and (2) any notice with respect to a decision by the British Coal Corporation to make or revoke an election to take in respect of that damage any remedial action other than that indicated in any such notice

mentioned in head (1) supra: s 52(2). As to notices see PARA 253 et seq post. The provisions of the Coal Industry Act 1994 s 63 (see PARA 112 ante) apply also to the service of documents under the Coal Mining Subsidence Act 1991: s 51 (substituted by the Coal Industry Act 1994 s 67(1), Sch 9 para 41(3)). As to the British Coal Corporation see PARAS 2-3 ante.

6 The period allowed for giving a notice with respect to any subsidence damage is six years beginning with the first date on which any person entitled to give the notice had the knowledge required for founding a claim in respect of the damage: Coal Mining Subsidence Act 1991 s 3(3). For these purposes the knowledge required for founding a claim in respect of any subsidence damage is knowledge (1) that the damage has occurred; and (2) that the nature of the damage and the circumstances are such as to indicate that the damage may be subsidence damage: s 3(4). A person's knowledge includes knowledge which he might reasonably have been expected to acquire from: (a) any facts which were observable or ascertainable by him; and (b) any facts which would have been ascertainable by him with the help of any expert advice which it was reasonable for him to seek: s 3(4), (5). 'Claim' means a claim in writing: s 52(1).

7 Ibid s 3(1).

8 Ibid s 3(2). 'Prescribed' means prescribed by regulations made by the Secretary of State: s 52(1). As to the Secretary of State see PARA 4 ante; and as to the Secretary of State's power to make regulations or orders see PARA 204 ante. References in the Coal Mining Subsidence Act 1991, in relation to any subsidence damage, to a damage notice are references to such a notice with respect to the damage given within the period allowed (see note 6 supra): s 3(2). For the prescribed particulars see the Coal Mining Subsidence (Notices and Claims) Regulations 1991, SI 1991/2509, regs 1, 2, Sch 1.

9 'Claimant', in relation to any subsidence damage, means the person who gave or, as the case may be, was the first person to give a damage notice to the responsible person in respect of the damage, and includes any successor in title of his: Coal Mining Subsidence Act 1991 ss 3(6), 52(1).

10 'Any other person interested', in relation to any subsidence damage and any time, means any person other than the claimant who, not less than seven days before that time, gave such a notice to the responsible person in respect of the damage, and includes any successor in title of any such person: ibid ss 3(6), 52(1).

11 As to the meaning of 'remedial obligation' see PARA 211 note 3 ante.

12 Coal Mining Subsidence Act 1991 s 4(1).

13 Ie under ibid s 4(1).

14 Ibid s 4(2)(a).

15 Ie a request informing the responsible person that the person making the request wishes to execute the remedial works in question himself or to have them executed on his behalf by a person specified in the request: see ibid ss 4(2), 8(3). For the meaning of 'request' see PARA 209 note 4 ante. As to the meaning of 'works' see PARA 205 note 3 ante.

16 As to payments in lieu see PARAS 216-218 post.

17 Coal Mining Subsidence Act 1991 s 4(2)(b).

18 Ie under ibid s 4(2).

19 Ibid s 4(3).

20 See the Coal Industry Act 1994 s 43(8), Sch 6 para 1(4).

21 As to the Coal Authority see PARA 52 et seq ante.

22 Coal Industry Act 1994 Sch 6 para 1(1).

23 Ie whether as a result of being forwarded under ibid Sch 6 para 1(1) or otherwise: see Sch 6 para 1(2).

24 Ibid Sch 6 para 1(2). The person to whom a notice is forwarded under Sch 6 para 1 is deemed for the purposes of the Coal Mining Subsidence Act 1991: (1) to have been given that notice by the person whose notice it is; and (2) to have received the notice within the period allowed by the Coal Mining Subsidence Act 1991 s 3 if it was or is deemed to have been so received by the person who forwarded it: Coal Industry Act 1994 Sch 6 para 1(3).

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213. Determination of appropriate remedial action.

Where the responsible person¹ has given a notice of proposed remedial action² with respect to any damage, he must meet his remedial obligation³ in respect of that damage by taking the appropriate remedial action⁴, and not in any other way⁵. The appropriate remedial action in relation to any damage is that stated in the notice of proposed remedial action with respect to that damage⁶. Where the responsible person has power to elect to make a discretionary payment in lieu⁷ or a discretionary depreciation payment⁸ in respect of any damage, and he has not exercised that power by stating in the notice of proposed remedial action that he proposes to make such a payment, he may exercise that power at any time subsequent to the date of that notice, but only with the agreement of the claimant⁹ and any other person interested¹⁰. Where, after the date of that notice, the responsible person elects to take remedial action other than that stated in the notice¹¹, so long as the election is effective the appropriate remedial action in relation to that damage is the substituted action¹².

1 As to the responsible person see PARA 206 ante.

2 References, in relation to any damage, to a notice of proposed remedial action are references to a notice under the Coal Mining Subsidence Act 1991 s 4(2) (whether as originally given or as revised under s 4(3)) (see PARA 212 ante): s 4(4). For the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 et seq post.

3 As to the meaning of 'remedial obligation' see PARA 211 note 3 ante.

4 As to the duty to take remedial action see PARA 211 ante.

5 Coal Mining Subsidence Act 1991 s 5(1). This does not apply where a responsible person has made an obligatory payment in lieu under s 9 (see PARA 217 post) or an obligatory depreciation payment under s 11 (see PARA 220 post): s 5(1).

6 Ibid s 5(2). This is subject to s 5(4), (6) (see the text to notes 11-12 infra): see s 5(2).

7 Ie under ibid s 8 (see PARA 218 post): s 5(3).

8 Ie under ibid s 10 (as amended) (see PARA 221 post): s 5(3).

9 For the meaning of 'claimant' see PARA 212 note 9 ante.

10 Coal Mining Subsidence Act 1991 s 5(3). For the meaning of 'any other person interested' see PARA 212 note 10 ante.

11 This action is called the 'substituted action': ibid s 5(4).

12 Ibid s 5(4). An election by the responsible person under either s 8 or s 10 (as amended) may at any time be revoked by the responsible person, but only with the agreement of the claimant and any other person interested: s 5(5). Where the responsible person revokes such an election made in respect of any damage by a notice of proposed remedial action, s 5 applies as if the execution of remedial works had been specified in that notice as the responsible person's proposed remedial action with respect to that damage: s 5(6).

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214. Schedule of remedial works.

At the same time as the responsible person¹ gives a notice of proposed remedial action² with respect to any damage (other than a notice stating that the only kind of action available for meeting his remedial obligation³ is the making of an obligatory payment in lieu⁴ or an obligatory depreciation payment⁵) he must send to the claimant⁶ and any other person interested a schedule of remedial works which meets the following requirements⁷.

The schedule of remedial works must specify: (1) the works which the responsible person considers to be remedial works in relation to the damage, that is to say, such works⁸ as are necessary in order to make good the damage, so far as it is reasonably practicable to do so, to the reasonable satisfaction of the claimant and any other person interested⁹; and (2) in the case of each item of those works, the amount of the cost which the responsible person considers it would be reasonable for any person to incur in order to secure that the work is executed¹⁰. The responsible person must send with a schedule of remedial works a notice stating that, if any other party¹¹ does not agree that the remedial action to be taken by the responsible person in respect of any damage should be determined by reference, where relevant, to the works and costs specified in the schedule, he should notify the responsible person within the period of 28 days beginning with the date of his receipt of the schedule¹². If any other party¹³ gives such a notification within that period and he and the responsible person do not agree the schedule, with or without modifications, before the end of the next succeeding period of 28 days, the matter may be referred to the Lands Tribunal¹⁴, which may determine the works and costs to be specified in the schedule¹⁵.

The schedule comes into effect (a) if no other party¹⁶ gives such a notification to the responsible person, at the end of the 28 day period from the receipt of the schedule¹⁷; and (b) in any other case, on the date on which the schedule is agreed or determined¹⁸. The schedule may be varied by agreement between the parties or determined¹⁹ by the Lands Tribunal²⁰.

Where any party by a notice given to the other party or parties²¹ requests²² a variation of the schedule, and the requested variation is not agreed between both or all parties, with or without modifications, before the end of the period of 28 days beginning with the date of the notice, the matter may be referred to the Lands Tribunal, which may determine whether the schedule is to have effect subject to the variation²³. On and after the date on which the schedule relating to any damage first comes into effect only the works specified in it are regarded as remedial works in relation to the damage²⁴.

1 As to the responsible person see PARA 206 ante.

2 As to notices of proposed remedial action see PARA 213 note 2 ante. For the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 et seq post.

3 As to the meaning of 'remedial obligation' see PARA 211 note 3 ante.

4 Ie under the Coal Mining Subsidence Act 1991 s 9 (see PARA 217 post): see s 6(1).

5 Ie under ibid s 11 (see PARA 220 post): see s 6(1).

6 For the meaning of 'claimant' see PARA 212 note 9 ante. The claimant and any other person interested are together referred to as 'the other parties': see ibid s 6(1). For the meaning of 'any other person interested' see PARA 212 note 10 ante.

- 7 Ibid s 6(1). References, in relation to any subsidence damage, to the schedule of remedial works are references to the schedule of remedial works under s 6 relating to the damage, as that schedule has effect for the time being: ss 6(8), 52(1). For the meaning of 'subsidence damage' see PARA 205 ante; and as to the meaning of 'works' see PARA 205 note 3 ante.
- 8 Such works include works of redecoration: see ibid s 6(1).
- 9 Ibid ss 6(2)(a), 52(1).
- 10 Ibid ss 6(2)(b), 52(1).
- 11 See note 6 supra.
- 12 Coal Mining Subsidence Act 1991 s 6(3).
- 13 See note 6 supra.
- 14 As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.
- 15 Coal Mining Subsidence Act 1991 s 6(4).
- 16 See note 6 supra.
- 17 See the Coal Mining Subsidence Act 1991 s 6(3), (5)(a)(i).
- 18 See ibid s 6(4), (5)(a)(ii).
- 19 Is determined under ibid s 6(6) (see the text to note 23 infra): see s 6(5)(b).
- 20 Ibid s 6(5)(b).
- 21 See note 6 supra.
- 22 For the meaning of 'request' see PARA 209 note 4 ante.
- 23 Coal Mining Subsidence Act 1991 s 6(6).
- 24 See ibid ss 6(7), 52(1).

UPDATE

214 Schedule of remedial works

TEXT AND NOTES 15, 23--References to the Lands Tribunal are now to the Upper Tribunal: Coal Mining Subsidence Act 1991 s 6(4), (6) (amended by SI 2009/1307).

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215. Execution of remedial works.

Where the responsible person¹ is under an obligation to execute remedial works² in respect of any damage, he must execute them as soon as reasonably practicable after the date on which a schedule of remedial works³ first comes into effect in relation to the damage⁴. The responsible person, if so requested by the claimant⁵ or any other person interested⁶ at any time before the remedial works are completed, must give him adequate information, in writing, with respect to any of those works still remaining to be executed⁷.

1 As to the responsible person see PARA 206 ante.

2 I.e. the remedial works specified in the Coal Mining Subsidence Act 1991 s 6(2): see PARA 214 ante. As to the meaning of 'works' see PARA 205 note 3 ante.

3 As to the schedule of remedial works see PARA 214 ante.

4 Coal Mining Subsidence Act 1991 s 7(1), (2).

5 For the meaning of 'claimant' see PARA 212 note 9 ante.

6 For the meaning of 'any other person interested' see PARA 212 note 10 ante.

7 Coal Mining Subsidence Act 1991 s 7(3).

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216. Payments in lieu of remedial of works.

The responsible person¹ is not required to make any payment in lieu² in respect of any works³ executed by any other person in connection with any property unless that person (1) has given to the responsible person the required notice⁴ with respect to the works⁵; and (2) has afforded the responsible person reasonable facilities to inspect the property, so far as he was in a position to do so⁶.

The responsible person may make advance payments in respect of any proposed expenditure⁷ qualifying for a payment in lieu⁸. However, such an advance payment may only be made if the responsible person is satisfied that it will be applied in meeting the expenditure in question⁹, and the responsible person may not unreasonably refuse any request¹⁰ to make an advance payment received from the person or persons by whom the cost of executing the works in question is to be incurred¹¹.

Any payment in lieu (including an advance payment) must be made to the person or persons by whom the cost of executing the works in question is (or is to be) incurred¹². If there are two or more such persons, the payment must be apportioned between them either in such manner as may be determined by agreement or, in default of agreement, in shares corresponding to their respective shares in the cost¹³. With the exception of advance payments¹⁴, before the expenditure in question is incurred, any payment in lieu must be made as soon as reasonably practicable after the expenditure in respect of which it is required to be made has been incurred¹⁵.

1 As to the responsible person see PARA 206 ante.

2 References to payments in lieu are references to payments in accordance with the Coal Mining Subsidence Act 1991 s 8 (see PARA 218 post) or s 9 (see PARA 217 post): ss 2(5)(a), 52(1).

3 As to the meaning of 'works' see PARA 205 note 3 ante.

4 The required notice with respect to any works is a notice which contains adequate particulars of the works; and, except in such circumstances as may be prescribed, is given at the prescribed interval before the works are begun: Coal Mining Subsidence Act 1991 s 13(2). For the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 et seq post. For the meaning of 'prescribed' see PARA 212 note 8 ante. As to the prescribed interval see the Coal Mining Subsidence (Notices and Claims) Regulations 1991, SI 1991/2509, reg 3.

5 Coal Mining Subsidence Act 1991 s 13(1)(a).

6 Ibid s 13(1)(b).

7 For the purposes of ibid s 13(3), proposed expenditure is expenditure qualifying for a payment in lieu if it is expenditure of a description in respect of which a payment in lieu would be required if it had been incurred: s 13(4).

8 Ibid s 13(3).

9 Ibid s 13(5)(a). An advance payment is to be regarded as made in accordance with s 8 (see PARA 218 post) or s 9 (see PARA 217 post) which requires the payment in lieu on account of which it is made: s 13(5)(b).

10 For the meaning of 'request' see PARA 209 note 4 ante.

11 Coal Mining Subsidence Act 1991 s 13(6).

- 12 Ibid s 13(7).
- 13 Ibid s 13(7).
- 14 See ibid s 13(3); and the text to note 8 supra.
- 15 Ibid s 13(8).

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217. Obligatory payments in lieu.

The responsible person¹ must meet his remedial obligation² in respect of any damage by making an obligatory payment in lieu³:

- 107 (1) where the damaged property is a highway maintainable at the public expense in England and Wales⁴;
- 108 (2) where the execution of remedial works⁵ falls within a duty with respect to the damaged property which, in connection with the maintenance of public services, is imposed by virtue of any enactment on (i) a government department⁶; (ii) a local authority⁷; or (iii) statutory undertakers⁸;
- 109 (3) where it is certified by the Secretary of State⁹ on an application made to him by any other person or of his own motion, that in his opinion it is not in the public interest that the responsible person should himself execute the remedial works¹⁰.

The payment required in respect of any damage is equal to the cost reasonably incurred by any person in executing remedial works¹¹. However, where remedial works are executed after the end of the period of three years beginning with the date of the claimant's¹² damage notice¹³, the amount of such payment must not exceed the cost which might reasonably have been expected to have been incurred in executing those works if they had been executed immediately before the end of that period¹⁴.

1 As to the responsible person see PARA 206 ante.

2 As to the meaning of 'remedial obligation' see PARA 211 note 3 ante.

3 Coal Mining Subsidence Act 1991 s 9(1).

4 Ibid s 9(2)(a). As to highways maintainable at the public expense see HIGHWAYS, STREETS AND BRIDGES.

5 Ie the remedial works specified in ibid s 6(2): see PARA 214 ante. As to the meaning of 'works' see PARA 205 note 3 ante.

6 Ibid s 9(2)(b)(i).

7 Ibid s 9(2)(b)(ii).

8 Ibid s 9(2)(b)(iii). 'Statutory undertakers' means: (1) any persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power; and (2) any licence holder within the meaning of the Electricity Act 1989 (see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARAS 1041, 1050 et seq); (3) any gas transporter (see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 805); (4) any water or sewerage undertaker (see WATER AND WATERWAYS vol 100 (2009) PARA 137); (5) the Environment Agency (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; WATER AND WATERWAYS vol 100 (2009) PARA 17); (6) any public telecommunications operator (see TELECOMMUNICATIONS vol 97 (2010) PARA 163); (7) any universal service provider in connection with the provision of a universal postal service (see POST OFFICE vol 36(2) (Reissue) PARA 24); (8) the Civil Aviation Authority (see AIR LAW vol 2 (2008) PARA 50 et seq); (9) any person who holds a licence under the Transport Act 2000 Pt I Ch I (ss 1-40) (to the extent that the person is carrying out activities authorised by the licence) (see AIR LAW vol 2 (2008) PARA 139 et seq); and (10) any relevant airport operator within the meaning of the Airports Act 1986 Pt V (ss 57-62) (as amended) (see AIR LAW vol 2 (2008) PARA 189); Coal Mining Subsidence Act 1991 s 52(1) (definition amended by the Gas Act 1995 s 16(1), Sch 4 para 2(2)(l); the Transport Act 2000 s 37, Sch 5 para 19; the Environment Act 1995 (Consequential Amendments)

Regulations 1996, SI 1996/593, reg 2, Sch 1; and the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001, SI 2001/1149, art 3(1), Sch 1 para 87(1), (2)). In head (7) *supra*, 'universal service provider' has the same meaning as in the Postal Service Act 2000 (see POST OFFICE); and any reference to the provision of a universal postal service is to be construed in accordance with that Act: Coal Mining Subsidence Act 1991 s 52(1) (added by the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001, SI 2001/1149, art 3(1), Sch 1 para 87(1), (3)).

9 As to the Secretary of State see PARA 4 *ante*.

10 Coal Mining Subsidence Act 1991 s 9(2)(c).

11 *Ibid* s 9(3).

12 For the meaning of 'claimant' see PARA 212 note 9 *ante*.

13 As to the meaning of 'damage notice' see PARA 212 note 8 *ante*. For the meaning of 'notice' see PARA 212 note 5 *ante*. As to notices see PARA 253 *et seq post*.

14 Coal Mining Subsidence Act 1991 s 9(4). As to the reckoning of this period while a stop notice is in force see s 16(5)(d); and PARA 224 *post*. As to the meaning of 'stop notice' see PARA 224 note 11 *post*.

UPDATE

217 Obligatory payments in lieu

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 8--Definition of 'statutory undertakers' in Coal Mining Subsidence Act 1991 s 52(1) amended: Communications Act 2003 Sch 17 para 109.

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218. Discretionary payments in lieu.

The responsible person¹ may elect to make payments in respect of the cost of remedial works² instead of executing such works himself in any of the following cases³.

Where the responsible person receives the necessary request⁴ from the claimant⁵ or any other person interested⁶, he may elect to make, in respect of the cost incurred by another person in executing any of the remedial works, a payment equal to the aggregate amount of the costs specified in the schedule of remedial works⁷. Where it is proposed to merge the execution of other works in connection with the damaged property with the execution of remedial works, or it is proposed to redevelop the damaged property instead of executing remedial works, the responsible person may elect to make a payment equal to any sums from time to time shown to have been expended by any other person in executing the merged works or the redevelopment works, up to an aggregate amount not exceeding the total scheduled cost⁸. Where, in the case of any property affected by subsidence damage⁹, immediately before that damage became evident the property was in a state of disrepair and it is not practicable to execute remedial works without including additional works which would not be necessary but for the disrepair¹⁰ and the total scheduled cost is at least 20 per cent¹¹ higher than it would have been if the costs of the works attributable to the disrepair had not been included, then the responsible person may elect to make in respect of the cost incurred by any other person in executing remedial works a payment equal to the amount by which the total scheduled cost exceeds the aggregate amount of the costs specified in the schedule of works in respect of the works attributable to the disrepair¹².

The responsible person may not unreasonably refuse a request to make an election to make a payment¹³. He is to be regarded as acting unreasonably in refusing any request¹⁴ which is received before he has begun to execute remedial works¹⁵, except where: (1) he has acceded to another such request made by another person; (2) the execution of remedial works by a person other than the responsible person would significantly impede the discharge of his remedial obligation¹⁶ in respect of one or more neighbouring properties; or (3) if the damage has rendered the property structurally unsound, the execution of such works by the person by whom the request was made or, as the case may be, by the person specified in the request would be unlikely to restore the structural integrity of the property, and (in any case) as soon as reasonably practicable after receiving the request, the responsible person gives notice¹⁷ to that effect to the person by whom the request was made¹⁸. Nor is the responsible person to be regarded as acting unreasonably in refusing any request¹⁹ which is received after he has begun to execute remedial works²⁰.

An election under these provisions, and any revocation of such an election, must be made by a notice given to the claimant and any other person interested²¹.

1 As to the responsible person see PARA 206 ante.

2 I.e. the remedial works specified in the Coal Mining Subsidence Act 1991 s 6(2): see PARA 214 ante. As to the meaning of 'works' see PARA 205 note 3 ante.

3 Ibid s 8(1).

4 For this purpose, the necessary request is a request informing the responsible person that the person making the request wishes to execute the remedial works in question himself or to have them executed on his behalf by a person specified in the request: *ibid* s 8(3). The responsible person may not unreasonably refuse any request complying with s 8(3) to make an election under s 8(2): s 8(7)(a). For the meaning of 'request' see PARA 209 note 4 ante.

5 For the meaning of 'claimant' see PARA 212 note 9 ante.

6 For the meaning of 'any other person interested' see PARA 212 note 10 ante.

7 Coal Mining Subsidence Act 1991 s 8(2). As to the schedule of remedial works see PARA 214 ante.

8 *Ibid* s 8(4). The total scheduled cost is the aggregate of the costs specified in the schedule of works: see s 8(4). The responsible person may not unreasonably refuse any request received from the claimant or any other person interested to make an election under this provision: s 8(7)(b). Where the responsible person has elected to make a payment in respect of a dwelling-house under s 8(4), he is entitled to recover as a civil debt from the owner of the dwelling-house any amount by which the responsible person's expenditure under Sch 5 (see PARA 231 post) in connection with the dwelling-house exceeds what it would have been if remedial works only had been executed: Sch 5 para 7. As to the relief for temporary dispossession see PARA 231 post. 'Dwelling-house', in relation to England and Wales, means any building or part of a building used wholly or partly as a private dwelling, together with any yard, garden, outhouses and appurtenances belonging to or usually enjoyed with that building or part: s 52(1).

9 For the meaning of 'subsidence damage' see PARA 205 ante.

10 These works are termed 'the works attributable to the disrepair': see the Coal Mining Subsidence Act 1991 s 8(5).

11 The Secretary of State may by order substitute for this percentage (whether as originally enacted or as previously amended) such other percentage as he thinks fit: *ibid* s 8(12). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 4 ante; and as to the Secretary of State's power to make regulations or orders see PARA 204 ante.

12 *Ibid* s 8(5). In any such case the schedule of remedial works must distinguish the works attributable to the disrepair from the works which would be necessary apart from the disrepair: s 8(6).

13 See *ibid* s 8(7); and notes 4, 8 *supra*.

14 *Ie* a request falling within *ibid* s 8(7)(a) (see note 4 *supra*) to make an election to make, in respect of costs incurred by another person in executing any remedial works, a payment equal to the amount of the costs specified in relation to those works in the schedule of remedial works: see s 8(8).

15 *Ibid* s 8(8). The reference to remedial works in s 8(8) does not include any remedial works begun before the further damage becomes evident: see s 18(3)(g); and PARA 226 post.

16 As to the meaning of 'remedial obligation' see PARA 211 note 3 ante.

17 For the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 *et seq post*.

18 Coal Mining Subsidence Act 1991 s 8(9).

19 *Ie* a request falling within *ibid* s 8(7) (see notes 4, 8 *supra*): see s 8(10).

20 *Ibid* s 8(10). The reference to remedial works in s 8(10) does not include any remedial works begun before the further damage becomes evident: see s 18(3)(g); and PARA 226 post.

21 *Ibid* s 8(11).

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219. Depreciation payments.

The responsible person¹ may elect to make, and in certain circumstances must make, a depreciation payment² instead of executing remedial works³ or making any payment in lieu⁴. However, the responsible person may not make a depreciation payment⁵ in respect of subsidence damage⁶ to a dwelling-house⁷, except after consultation with the local authority⁸ in whose area the dwelling-house is situated⁹. The responsible person may not make a depreciation payment in respect of subsidence damage to any property other than a dwelling-house, where that property is of a prescribed description¹⁰, except after consultation with the Minister of the Crown or other person as may be so prescribed in relation to that description of property¹¹.

A depreciation payment must be made as soon as reasonably practicable after the obligation to make it arises¹². Provision is made for determining the unit of property to be taken into account¹³ and for determining the basis of the valuation¹⁴ and the amount of any depreciation in the value of any such unit in respect of which a depreciation payment falls to be made¹⁵. Interest is payable on outstanding depreciation payments¹⁶.

1 As to the responsible person see PARA 206 ante.

2 References to depreciation payments are references to payments in accordance with the Coal Mining Subsidence Act 1991 s 10 (as amended) (see PARA 221 post) or s 11 (see PARA 220 post): see ss 2(5)(b), 52(1).

3 I.e. the remedial works specified in *ibid* s 6(2): see PARA 214 ante. As to the meaning of 'works' see PARA 205 note 3 ante.

4 As to payments in lieu see PARAS 216-218 ante.

5 I.e. other than a payment under the Coal Mining Subsidence Act 1991 s 11(3) (see PARA 220 post): see s 14(1).

6 For the meaning of 'subsidence damage' see PARA 205 ante.

7 For the meaning of 'dwelling-house' see PARA 218 note 8 ante.

8 I.e. within the meaning of the Housing Act 1985 (see HOUSING vol 22 (2006 Reissue) PARA 10): see the Coal Mining Subsidence Act 1991 s 14(1).

9 *Ibid* s 14(1).

10 I.e. prescribed for the purposes of *ibid* s 14(2): see s 14(2). At the date at which this volume states the law no such regulations had been made. For the meaning of 'prescribed' see PARA 212 note 8 ante. As to the Secretary of State see PARA 4 ante; and as to the Secretary of State's power to make regulations or orders see PARA 204 ante.

11 *Ibid* s 14(2).

12 *Ibid* s 14(3).

13 The unit of property to be taken into account for any purposes of *ibid* s 10 (as amended) or s 11 is:

61 (1) where any property affected constitutes or is comprised in a dwelling-house, that dwelling-house (s 14(4), Sch 1 para 1(1)(a));

62 (2) where any property affected, other than property to which head (1) supra applies, is situated in England and Wales and is a relevant non-domestic hereditament for the purposes of the Local Government Finance Act 1988 Pt III (ss 41-67) (as amended), that hereditament (Coal Mining Subsidence Act 1991 Sch 1 para 1(1)(b));

63 (3) in any other case, such unit consisting of or comprising any property affected as may be equitable in all the circumstances of the case (Sch 1 para 1(1)(d)).

If it is equitable in all the circumstances of the case to do so, two or more units of property, or a unit of property part only of which is property affected, may in either case be treated for those purposes either as a single unit of property, or as consisting of such separate units of property as may be equitable in those circumstances: Sch 1 para 1(2). For these purposes, a reference to property affected is a reference to property which has been affected by subsidence damage: Sch 1 para 1(3).

14 For any purposes of *ibid* s 10 (as amended) or s 11, the value of a unit of property at any time is taken to be the amount which it might be expected to realise in the state in which it is at that time on a sale effected at that time: Sch 1 para 2(1). In the case of property comprising land or buildings, such a sale is a sale of the fee simple in the open market and with vacant possession, subject to (1) any restrictive covenant, easement, quasi-easement or other right inuring for the benefit of other land; (2) any public right of way, right of common or other right inuring for the benefit of the public or any section of the public; and (3) any restriction imposed by or under any enactment, to which the property is subject at the time of the sale, but free from any other incumbrance: Sch 1 para 2(2). In the case of property comprising land or buildings, the value is to be determined without regard to any liability of the property to become subject after the time of the sale to any restriction by virtue of any enactment other than a demolition or closing order made under housing clearance powers, or where the property is situated in England and Wales, the declaration of an area to be a clearance area under such powers: Sch 1 para 2(3). 'Housing clearance powers' means the Housing Act 1985 Pt IX (ss 264-323) (as amended) (see HOUSING): Coal Mining Subsidence Act 1991 s 52(1). Provision may be made by regulations made by the Secretary of State for ascertaining the value of a unit of property consisting of or comprising property of a kind not normally the subject of sales in the open market: see Sch 1 para 2(4). At the date at which this volume states the law no such regulations had been made. In determining the value of any property which has been affected by subsidence damage, any right to a depreciation payment in respect of that damage is to be disregarded: Sch 1 para 2(5).

15 For the purposes of *ibid* s 10 (as amended) or s 11 the amount of the depreciation in the value of a unit of property caused by any subsidence damage is taken to be the amount by which the value of the property at the relevant time is less than what would have been its value at that time if it had not been affected by the damage: Sch 1 para 3(1). For these purposes the relevant time:

64 (1) in relation to the determination of the amount of a discretionary depreciation payment under s 10 (as amended) is the time immediately after the date on which the responsible person gives to the claimant a notice of proposed remedial action with respect to the damage (Sch 1 para 3(2)(a));

65 (2) in relation to the determination of the amount of an obligatory depreciation payment under s 11(1) is whichever is the later of the time mentioned in head (1) supra and the time immediately after (a) the service of the notice to treat; (b) the making of the demolition or closing order; or (c) where the property is situated in England and Wales, the declaration of the area to be a clearance area, by virtue of which the obligation to make the payment arises (Sch 1 para 3(2)(b)); and

66 (3) in relation to the determination of the amount of a depreciation payment under s 11(3) (obligation to make a depreciation payment in respect of depreciation continuing after completion of remedial works), is the time immediately after the completion of the remedial works (Sch 1 para 3(2)(c)).

16 So much of any depreciation payment as for the time being remains unpaid by the responsible person carries interest at the applicable rate (if any) in respect of any period falling (1) after the relevant time (see note 15 supra) in relation to that payment; and (2) before the whole amount and any accrued interest is paid: *ibid* Sch 1 para 4(1). However, any period of delay in determining the amount of any such payment which is attributable to unreasonable conduct on the part of the claimant or any other person interested is to be disregarded: Sch 1 para 4(2). References, in relation to any interest payable by the responsible person, to the applicable rate are references to such rate as may from time to time be prescribed by order made by the Secretary of State; and such an order may (a) apply different rates in relation to different periods; (b) include provision for a nil rate to apply in relation to any period; and (c) fix any rate by specifying it or by applying any rate for the time being applicable for any other purpose (whether statutory or otherwise): s 52(3). At the date at which this volume states the law, the applicable rate is the rate for the time being prescribed under the Land Compensation Act 1961 s 32 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 641): Coal Mining Subsidence (Preventive Measures and Rates of Interest) Order 1991, SI 1991/2510, arts 1, 3.

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220. Obligatory depreciation payments.

Where in the case of any dwelling-house¹ affected by subsidence damage², at any time before the completion of remedial works³ or, in certain other cases⁴ at any time before all sums in respect of which the responsible person⁵ is liable to make payments have been expended (1) a notice to treat⁶ for the compulsory purchase of the dwelling-house under housing clearance powers⁷ is served in such circumstances that the compulsory purchase will be attributable to the damage; or (2) a demolition or closing order is made⁸ in respect of the dwelling-house under housing clearance powers in such circumstances that the making of the order is so attributable, the responsible person must make a payment equal to the amount of the depreciation in the value of the dwelling-house caused by the damage⁹.

Where in the case of any property affected by subsidence damage remedial works have been executed, but there is a depreciation in the value of the property caused by any damage the making good of which to the reasonable satisfaction of the claimant¹⁰ and any other person interested¹¹ was not reasonably practicable, the responsible person must make in respect of the property a payment equal to the amount of that depreciation¹².

1 For the meaning of 'dwelling-house' see PARA 218 note 8 ante.

2 For the meaning of 'subsidence damage' see PARA 205 ante.

3 I.e. the remedial works specified in the Coal Mining Subsidence Act 1991 s 6(2): see PARA 214 ante. As to the meaning of 'works' see PARA 205 note 3 ante.

4 I.e. in a case falling within *ibid* s 8(4) (see PARA 218 ante): see s 11(1).

5 As to the responsible person see PARA 206 ante.

6 References in the Coal Mining Subsidence Act 1991 s 10 (as amended) (see PARA 221 ante) or s 11 to the service of a notice to treat are references to the service of such a notice under the Compulsory Purchase Act 1965 s 5 (as amended) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 616): Coal Mining Subsidence Act 1991 s 10(5). For the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 et seq post.

7 For the meaning of 'housing clearance powers' see PARA 219 note 14 ante.

8 This reference to the making of a demolition or closing order in respect of the dwelling-house includes, in relation to England and Wales, a reference to an area in which the dwelling-house is situated being declared to be a clearance area: Coal Mining Subsidence Act 1991 s 11(4).

9 *Ibid* s 11(1). This provision applies without prejudice to any expenditure or liability of the responsible person under s 7 (see PARA 215 ante) or s 8 (see PARA 218 ante) in respect of works already executed, and where the responsible person makes a payment under s 11(1) no further action is required of him under Pt II (ss 2-21) (as amended) in pursuance of his remedial obligation in respect of the dwelling-house: s 11(2). As to the meaning of 'remedial obligation' see PARA 211 note 3 ante.

10 For the meaning of 'claimant' see PARA 212 note 9 ante.

11 For the meaning of 'any other person interested' see PARA 212 note 10 ante.

12 Coal Mining Subsidence Act 1991 s 11(3).

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221. Discretionary depreciation payments.

The responsible person may elect to make a payment equal to the amount of the depreciation in the value of the damaged property caused by the damage (known as the 'depreciation amount')¹ instead of executing any remedial works² or making any payment in lieu³ where⁴:

- 110 (1) the aggregate amount of the costs specified in the schedule of remedial works⁵ exceeds the depreciation amount by at least 20 per cent⁶;
- 111 (2) the property is not a dwelling-house⁷ and the responsible person and the person or persons to whom any payment would fall to be made agree that such a payment should be made⁸;
- 112 (3) the property is a dwelling-house and it appears that a notice to treat⁹ is likely to be served for the compulsory purchase of the dwelling-house under housing clearance powers¹⁰ in such circumstances that the compulsory purchase will be attributable to the subsidence damage¹¹.

An election to make a discretionary depreciation payment, and any revocation of such an election, must be made by a notice given to the claimant¹² and any other person interested¹³.

1 As to the responsible person see PARA 206 ante. As to discretionary depreciation payments see *Langley v Coal Authority* [2003] EWCA Civ 204, [2003] All ER (D) 297 (Feb).

2 I.e. the remedial works specified in the Coal Mining Subsidence Act 1991 s 6(2): see PARA 214 ante. As to the meaning of 'works' see PARA 205 note 3 ante.

3 As to payments in lieu see PARAS 216-218 ante.

4 See the Coal Mining Subsidence Act 1991 s 10(1).

5 As to the schedule of remedial works see PARA 214 ante.

6 Coal Mining Subsidence Act 1991 s 10(2)(a). The Secretary of State may by order substitute for this percentage (whether as originally enacted or as previously amended) such other percentage as he thinks fit; and such an order may provide for different percentages to apply in relation to different descriptions of property: s 10(3). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 4 ante; and as to the Secretary of State's power to make regulations or orders see PARA 204 ante.

7 For the meaning of 'dwelling-house' see PARA 218 note 8 ante.

8 Coal Mining Subsidence Act 1991 s 10(2)(b).

9 As to the service of a notice to treat see PARA 220 note 6 ante. For the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 et seq post.

10 For the meaning of 'housing clearance powers' see PARA 219 note 14 ante.

11 Coal Mining Subsidence Act 1991 s 10(2)(c) (amended by the Coal Industry Act 1994 ss 43, 67, Sch 6 para 3(1), Sch 11 Pt II). For the meaning of 'subsidence damage' see PARA 205 ante.

12 For the meaning of 'claimant' see PARA 212 note 9 ante.

13 Coal Mining Subsidence Act 1991 s 10(4). For the meaning of 'any other person interested' see PARA 212 note 10 ante.

UPDATE

221 Discretionary depreciation payments

NOTE 1--*Langley*, cited, reported at [2005] RVR 111.

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222. Recipients of depreciation payments.

A depreciation payment¹ must be made to the person who is for the time being the owner² of the property in question, except in the following circumstances³. If any other person is liable to make good the whole of the damage to which the payment relates, the payment must be made to him⁴. If any other person is liable to make good any part of that damage, such part of the amount of the payment must be paid to him as bears to the whole of that amount the same proportion as the scheduled cost of works⁵ for which he is responsible bears to the total scheduled cost⁶.

Provision is made for determining the persons who are to receive depreciation payments in special cases⁷. Where the interest in the property of any person to whom⁸ the whole or part of a depreciation payment would fall to be made was subject to a mortgage at the relevant time⁹, the payment or that part of the payment must be paid to the mortgagee¹⁰. The Secretary of State¹¹ may by regulations make provision as to the person to whom a depreciation payment or any part of it is to be paid in cases where the interest in the property of a person to whom¹² the whole or part of the payment would fall to be paid was at the relevant time subject to a rentcharge¹³. Where, in the case of property situated in England or Wales, the interest in the property of the person to whom¹⁴ the whole or part of a depreciation payment would fall to be paid is subject to a settlement or otherwise held in such manner that the person entitled to the interest would not be competent to give an effective discharge for the proceeds of a sale of the interest, that payment or that part of that payment must be paid to the person competent to give such a discharge¹⁵. Where the interest in the property of the person to whom the whole or part of a depreciation payment falls to be paid, or the proceeds of sale of that interest, are the subject of a devise or bequest, that devise or bequest is to be treated as including that payment or that part of that payment¹⁶. Where the interest in the property of the person to whom the whole or part of a depreciation payment falls to be paid is the subject of a contract of sale made before the relevant time or a notice to treat¹⁷ served before that time under an enactment authorising the compulsory acquisition of the interest, that payment or that part of that payment must be held by that person in trust for the purchaser unless the contract is rescinded or the notice ceases to have effect¹⁸.

1 As to depreciation payments see PARAS 219-221 ante.

2 For the meaning of 'owner' see PARA 209 note 5 ante.

3 Coal Mining Subsidence Act 1991 s 15(1).

4 Ibid s 15(2).

5 This reference to the scheduled cost of works for which the other person is responsible is a reference to the aggregate amount of the costs specified in the schedule of remedial works in respect of works required for making good the part of the damage which he is liable to make good: *ibid* s 15(4)(a). As to the schedule of remedial works see PARA 214 ante. As to the meaning of 'works' see PARA 205 note 3 ante.

6 Ibid s 15(3). This reference to the total scheduled cost is a reference to the aggregate amount of all costs specified in the schedule of remedial works: s 15(4)(b).

7 See *ibid* s 15(5), Sch 2 (as amended). References in s 15, Sch 2 (as amended) to a depreciation payment or part of such a payment include any interest payable in respect of that payment or that part in accordance with Sch 1 (see PARA 219 ante): see s 15(5).

8 le apart from ibid Sch 2 para 1 or Sch 2 para 4: see Sch 2 para 1(1) (as amended: see note 10 infra).

9 le the time when the subsidence damage became evident: see ibid Sch 2 para 1(1) (as amended: see note 10 infra). For the meaning of 'subsidence damage' see PARA 205 ante.

10 Ibid Sch 2 para 1(1) (amended by the Coal Industry Act 1994 ss 43(8), 67(8), Sch 6 para 11, Sch 11 Pt II). The mortgagee is liable to account for such a payment as if it had been proceeds of sale of the mortgaged interest arising under a power of sale exercised by the mortgagee at the relevant time, except that the mortgagee is not entitled to credit for any costs incurred by him in connection with the claiming, ascertainment, apportionment or making of the payment: Coal Mining Subsidence Act 1991 Sch 2 para 1(2). If at the time when the depreciation payment is made the debt secured by the mortgage (other than any part of it representing costs for which the mortgagee would not be entitled to credit) has been paid in full, the depreciation payment is to be disposed of as if the interest had not been subject to the mortgage: Sch 2 para 2(1), (2). As to the situation where the interest was subject to two or more successive mortgages see Sch 2 para 2(1), (3). Schedule 2 para 1 has effect in any case, as regards any mortgage, subject to any agreement between the mortgagee and the person who apart from that mortgage would have been entitled to receive the depreciation payment or part of that payment: Sch 2 para 2(1), (4). As to mortgages generally see MORTGAGE vol 77 (2010) PARA 101 et seq.

11 As to the Secretary of State see PARA 4 ante.

12 le apart from the Coal Mining Subsidence Act 1991 Sch 2 para 2 or Sch 2 para 4 (as amended): see Sch 2 para 3(1).

13 Ibid Sch 2 para 3(1). At the date at which this volume states the law no such regulations had been made. As to the Secretary of State's power to make regulations or orders see PARA 204 ante. For these purposes, 'rentcharge' means, in relation to property situated in England and Wales, any annual or other periodic sum charged on or issuing out of land, except rent reserved by a lease or tenancy and any sum payable by way of interest: Sch 2 para 3(2)(a). As to rentcharges generally see RENTCHARGES AND ANNUITIES.

14 le apart from ibid Sch 2 para 4(1): see Sch 2 para 4(1).

15 Ibid Sch 2 para 4(1). Note that as from 1 January 1997 no new settlements can be created under the Settled Land Act 1925. As to the phasing out of strict settlements and the introduction of the 'trust of land' see the Trusts of Land and Appointment of Trustees Act 1996 s 2(1); and PARA 285 note 2 post.

16 Coal Mining Subsidence Act 1991 Sch 2 para 5. As to devises and bequests generally see WILLS.

17 As to the service of a notice to treat see PARA 220 note 6 ante. For the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 et seq post.

18 Coal Mining Subsidence Act 1991 Sch 2 para 6(1). Any lien upon that interest to which that person is entitled by virtue of the contract extends to that payment or that part of that payment: Sch 2 para 6(2).

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223. Payments in respect of emergency works.

Where emergency works¹ are executed by any other person, the responsible person² is under a duty³ to make a payment⁴ in respect of the cost of those works⁵. Emergency works are works urgently and reasonably required in order that the damaged property may continue to be used for the purposes for which it was used immediately before the damage became evident, or in order to prevent the property being affected by further subsidence damage⁶. The required payment is equal to the cost reasonably incurred by any person other than the responsible person in executing those works⁷. However, the responsible person is not required to make any payment in respect of any emergency works executed by any other person in connection with any property unless that person (1) has given to the responsible person as soon as was reasonably practicable in all the circumstances a notice⁸ containing adequate particulars of those works⁹; and (2) has afforded the responsible person reasonable facilities to inspect the property, so far as he was in a position to do so¹⁰. The responsible person is also not required to make such a payment if the emergency works are executed after he has elected¹¹ to make a depreciation payment¹² in respect of the damaged property¹³.

Any payment in respect of emergency works must be made to the person or persons by whom the cost of executing the works in question is (or is to be) incurred¹⁴.

1 As to the meaning of 'works' see PARA 205 note 3 ante.

2 As to the responsible person see PARA 206 ante.

3 This is subject to the provisions of the Coal Mining Subsidence Act 1991 Pt II (ss 2-21) (as amended): see s 2(4).

4 Ie in accordance with ibid s 12: see s 2(4).

5 Ibid s 2(4).

6 See ibid s 12(1). For the meaning of 'subsidence damage' see PARA 205 ante.

7 See ibid s 12(1).

8 For the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 et seq post.

9 Coal Mining Subsidence Act 1991 s 12(2)(a)(i).

10 Ibid s 12(2)(a)(ii).

11 Ie under ibid s 10 (as amended) (see PARA 221 ante): see s 12(2)(b).

12 As to depreciation payments see PARAS 219-222 ante.

13 Coal Mining Subsidence Act 1991 s 12(2)(b).

14 Ibid s 12(3). If there are two or more such persons, the payment must be apportioned between them in such manner as may be determined by agreement or, in default of agreement, in shares corresponding to their respective shares in the cost: s 12(3).

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224. Stop notices where further damage is likely to occur.

Where at any time (1) a damage notice¹ has been given to the responsible person² in respect of subsidence damage³ to any property; and (2) it appears to be probable that further subsidence damage will occur to that property within the period of 18 months beginning with that time, the following provisions apply, and the responsible person must as soon as reasonably practicable after receiving such a notice, consider whether the condition in head (2) above is satisfied⁴.

The responsible person may give to the claimant⁵ and any other person interested⁶ a notice to the effect that, except for emergency works⁷ and such other works as may be specified in the notice (known as 'excepted works'), the responsible person will neither execute any works for making good the damage while the notice remains in force nor make any payments in respect of such works executed while the notice remains in force⁸. The responsible person must specify in such a notice such works⁹ (if any) as are required in order to render the damaged property reasonably fit to be used for the purposes for which it was used immediately before the damage became evident¹⁰.

Where the responsible person gives a stop notice¹¹ to any person with respect to any damage: (a) the responsible person's remedial obligation¹² to that person in respect of the damage is subject to the terms of that notice¹³; (b) any notice affecting the required remedial action¹⁴ in respect of the damage given by the responsible person before the stop notice is given ceases to have effect, except in so far as it relates to excepted works¹⁵; (c) any schedule of remedial works¹⁶ relating to the damage sent to that person before the stop notice is given does not take effect or, as the case may be, ceases to have effect, except in so far as it relates to excepted works and related costs¹⁷; (d) any period during which the stop notice is in force is to be disregarded in reckoning the period allowed for making a claim for obligatory payments in lieu¹⁸, except in relation to any excepted works¹⁹; and (e) so long as the stop notice is in force the responsible person is not required to give any notice of proposed remedial action²⁰ in respect of the damage or to send to that person any schedule of remedial works, except so far as any such notice or schedule is required for the purposes of excepted works²¹.

A stop notice given to any person with respect to any damage has no effect unless it is given within the period of three months²² beginning with the relevant time²³, or such longer period beginning with that time as may be agreed between the responsible person and that person²⁴.

1 As to the meaning of 'damage notice' see PARA 212 note 8 ante. For the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 et seq post.

2 As to the responsible person see PARA 206 ante.

3 For the meaning of 'subsidence damage' see PARA 205 ante.

4 Coal Mining Subsidence Act 1991 s 16(1) (amended by the Coal Industry Act 1994 ss 43(8), 67(8), Sch 6 para 3, Sch 11 Pt II).

5 For the meaning of 'claimant' see PARA 212 note 9 ante.

6 For the meaning of 'any other person interested' see PARA 212 note 10 ante.

7 For the meaning of 'emergency works' see PARA 223 ante; and as to the meaning of 'works' see PARA 205 note 3 ante.

8 Coal Mining Subsidence Act 1991 s 16(2).

9 ie not being emergency works or works the execution of which is not reasonably practicable in all the circumstances of the case: see *ibid* s 16(3).

10 *Ibid* s 16(3).

11 References, in relation to any damage, to a stop notice are references to a notice under *ibid* s 16 (as amended) relating to the damage: ss 16(4), 52(1).

12 As to the meaning of 'remedial obligation' see PARA 211 note 3 ante.

13 Coal Mining Subsidence Act 1991 s 16(5)(a).

14 As to remedial action see PARA 211 ante.

15 Coal Mining Subsidence Act 1991 s 16(5)(b).

16 As to the schedule of remedial works see PARA 214.

17 Coal Mining Subsidence Act 1991 s 16(5)(c).

18 ie the period mentioned in *ibid* s 9(4) (see PARA 217 ante). As to payments in lieu see PARAS 216-218 ante. For the meaning of 'claim' see PARA 212 note 6 ante.

19 *Ibid* s 16(5)(d).

20 For the meaning of 'notice of proposed remedial action' see PARA 213 note 2 ante.

21 Coal Mining Subsidence Act 1991 s 16(5)(e). In the case excepted from head (e) in the text, the provisions of Pt II (ss 2-21) (as amended) apply as if:

67 (1) the responsible person's remedial obligation in respect of the damage were limited to such part of the damage as can be remedied or alleviated by the excepted works (s 16(5)(f)(i)); and

68 (2) references to such works as are necessary in order to make good the damage to that person's reasonable satisfaction were references to the excepted works (s 16(5)(f)(ii)).

22 The Secretary of State may by order substitute for this period (whether as originally enacted or as previously amended) such other period as he thinks fit: *ibid* s 16(8). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 4 ante; and as to the Secretary of State's power to make regulations or orders see PARA 204 ante.

23 For this purpose, 'the relevant time' means: (1) the time when it first appears to be probable that further subsidence damage will occur to the property within the next succeeding period of 18 months; or (2) any later time when it first appears that any such damage will be substantially more serious than appeared at that earlier time: *ibid* s 16(7) (amended by the Coal Industry Act 1994 ss 43(8), 67(8), Sch 6 para 3, Sch 11 Pt II).

24 Coal Mining Subsidence Act 1991 s 16(6).

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225. Revocation and review of stop notices.

The responsible person¹ is under a duty to revoke a stop notice² relating to any damage to any property if:

- 113 (1) at any time, it no longer appears to be probable that further damage will occur to that property within the period of 18 months beginning with that time³; or
- 114 (2) at any time after the end of the period of three years⁴ beginning with the relevant date⁵, the claimant⁶ and any other person interested⁷ request the responsible person to revoke it⁸.

Where a stop notice has been given with respect to any damage, the responsible person must consider, initially not later than 12 months after the date on which the notice was given and subsequently at intervals not exceeding 12 months, whether to revoke it⁹. Where a stop notice given to any person with respect to any damage is revoked a fresh notice of proposed remedial action¹⁰ relating to the damage (or to so much of it as has not been made good by any emergency works¹¹ or any excepted works¹²) must be given by the responsible person to that person as soon as reasonably practicable after the date of the revocation¹³. Any such notice of proposed remedial action which is effective immediately before that date ceases to have effect on the giving of the fresh notice¹⁴ and any schedule of remedial works¹⁵ relating to the damage which is effective immediately before that date also ceases to have effect when the schedule of remedial works sent¹⁶ in connection with the fresh notice of proposed remedial action comes into effect¹⁷.

1 As to the responsible person see PARA 206 ante.

2 As to the meaning of 'stop notice' see PARA 224 note 11 ante. For the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 et seq post.

3 Coal Mining Subsidence Act 1991 s 17(1)(a) (amended by the Coal Industry Act 1994 ss 43(8), 67(8), Sch 6 para 3, Sch 11 Pt II).

4 The Secretary of State may by order substitute for this period (whether as originally enacted or as previously amended) such other period as he thinks fit: Coal Mining Subsidence Act 1991 s 17(5). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 4 ante; and as to the Secretary of State's power to make regulations or orders see PARA 204 ante.

5 For these purposes, the 'relevant date', in relation to a stop notice, means: (1) the date on which the stop notice was given; or (2) where one or more previous stop notices had been given in respect of the whole or any part of the damage, the date on which that notice or, as the case may be, the first of those notices was given: *ibid* s 17(4).

6 For the meaning of 'claimant' see PARA 212 note 9 ante.

7 For the meaning of 'any other person interested' see PARA 212 note 10 ante.

8 Coal Mining Subsidence Act 1991 s 17(1)(b).

9 *Ibid* s 17(2). On any occasion when in pursuance of s 17(2) the responsible person considers whether to revoke a stop notice he must give notice of his decision to the person to whom the stop notice was given as soon as he has made it: s 17(6).

- 10 As to the meaning of 'notice of proposed remedial action' see PARA 213 note 2 ante.
- 11 As to the meaning of 'emergency works' see PARA 223 ante.
- 12 Ie within the meaning of the Coal Mining Subsidence Act 1991 s 16 (as amended) (see PARA 224 ante): see s 17(3)(a).
- 13 Ibid s 17(3)(a).
- 14 Ibid s 17(3)(b).
- 15 As to the schedule of remedial works see PARA 214 ante.
- 16 Ie under the Coal Mining Subsidence Act 1991 s 6(1) (see PARA 214 ante): see s 17(3)(c).
- 17 Ibid s 17(3)(c).

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226. The effect of further damage.

Where a damage notice¹ has been given to the responsible person² in respect of subsidence damage³ to any property and further subsidence damage to that property becomes evident in certain circumstances⁴, the original damage and the further damage are to be treated as one and a fresh damage notice will only be required if, before the further damage becomes evident, the responsible person has elected⁵ to make a payment in lieu⁶ instead of executing any remedial works⁷. Any notice affecting the required remedial action⁸ in respect of the original damage given before the further damage becomes evident ceases to have effect⁹. Where a fresh damage notice is not required, a fresh notice of proposed remedial action¹⁰ relating to the combined damage must be given by the responsible person to the claimant¹¹ and any other person interested¹² as soon as reasonably practicable after the further damage becomes evident¹³. Any schedule of remedial works¹⁴ relating to the original damage sent to the claimant or any other person interested before the further damage becomes evident does not take effect or, as the case may be, ceases to have effect¹⁵. Any stop notice¹⁶ given to any person with respect to the original damage has effect in relation to the combined damage as if there were specified in it as excepted works such works (if any) as may be specified by the responsible person¹⁷. The responsible person, the claimant and any other person interested may agree that certain effects of further damage do not apply or are to be modified¹⁸.

These provisions are without prejudice to any liability of the responsible person in respect of the cost of any works executed before the further damage becomes evident¹⁹.

1 As to the meaning of 'damage notice' see PARA 212 note 8 ante. For the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 et seq post.

2 As to the responsible person see PARA 206 ante.

3 For the meaning of 'subsidence damage' see PARA 205 ante.

4 Coal Mining Subsidence Act 1991 s 18(1). The circumstances referred to in the text are that:

69 (1) the further damage becomes evident before the completion of remedial works or, in a case falling within s 8(4) (see PARA 218 ante), before all sums in respect of which the responsible person is liable to make payments have been expended (s 18(2)(a)); and

70 (2) at the time when it becomes evident, the responsible person has neither elected under s 10 (as amended) (see PARA 221 ante) nor become liable under s 11(1) (see PARA 220 ante) to make a depreciation payment in respect of the damaged property (s 18(2)(b)).

As to depreciation payments see PARAS 219-222 ante.

5 Ie under ibid s 8 (see PARA 218 ante): see s 18(3)(a).

6 As to payments in lieu see PARAS 216-218 ante.

7 Coal Mining Subsidence Act 1991 s 18(3)(a).

8 As to remedial action see PARA 211 ante.

9 Coal Mining Subsidence Act 1991 s 18(3)(b). Accordingly, Pt II (ss 2-21) (as amended) applies as if that notice had not been given: s 18(3)(b).

10 As to the meaning of 'notice of proposed remedial action' see PARA 213 note 2 ante.

11 For the meaning of 'claimant' see PARA 212 note 9 ante.

12 For the meaning of 'any other person interested' see PARA 212 note 10 ante.

13 Coal Mining Subsidence Act 1991 s 18(3)(c).

14 As to the schedule of remedial works see PARA 214 ante.

15 Coal Mining Subsidence Act 1991 s 18(3)(d). If the aggregate amount of the costs specified in a fresh schedule of remedial works does not exceed the aggregate amount of the costs specified in any schedule of remedial works to which s 18(3)(d) applies by more than 20% (or such percentage as the Secretary of State may by order substitute as he thinks fit: see s 18(8)), s 6(3), (4) (see PARA 214 ante) does not apply and s 6(5) (a) has effect as if for s 6(5)(a)(i), (ii) there were substituted a reference to the date on which the schedule is sent to the claimant or any other person interested: s 18(3)(e).

16 As to the meaning of 'stop notice' see PARA 224 note 11 ante.

17 Coal Mining Subsidence Act 1991 s 18(3)(f). The responsible person must specify in such a notice such works (if any) as are required in order to render the damaged property reasonably fit to be used for the purposes for which it was used immediately before the original damage became evident, not being emergency works, or works the execution of which is not reasonably practicable in all the circumstances of the case: s 18(5). Note that the references to remedial works in s 8(8), (10) (see PARA 218 ante) do not include any remedial works begun before the further damage becomes evident: s 18(3)(g).

18 Ie they may agree: (1) that *ibid* s 18(3)(a)-(e) does not apply; and (2) that any such notice or schedule as is mentioned in s 18(3)(b) or s 18(3)(d) has effect in relation to the combined damage with such modifications as may be so agreed: see s 18(6).

19 *Ibid* s 18(7).

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(b) Special Cases

227. Ancient monuments and listed buildings.

Where certain ancient monuments¹ and listed buildings² are affected by subsidence damage³ and the character of the property as one of historic, architectural, archaeological or other special interest is or may be affected by that damage, then in so far as it is reasonably practicable and in the public interest so to restore the property to its former condition⁴ as to maintain its character as one of special interest, the statutory provisions relating to remedial action⁵ have effect with modifications⁶. Any question arising⁷ as to whether or how far it is reasonably practicable or in the public interest to restore any such property is to be determined by the Secretary of State⁸.

1 Ie any property which (1) is for the time being included in the Schedule of monuments compiled and maintained under the Ancient Monuments and Archaeological Areas Act 1979 s 1 (as amended) (see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1010 et seq); and (2) has been notified to the responsible person by the Secretary of State as an ancient monument within the meaning of that Act for the time being under the care of the Secretary of State: Coal Mining Subsidence Act 1991 s 19(1)(a), (b). As to the responsible person see PARA 206 ante. As to the Secretary of State see PARA 4 ante. As to ancient monuments generally see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1002 et seq.

2 Ie any property which is a listed building within the meaning of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1 (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1092) and is not of a description specified in an order made by the Secretary of State: Coal Mining Subsidence Act 1991 s 19(1)(c).

3 For the meaning of 'subsidence damage' see PARA 205 ante.

4 For these purposes, 'former condition', in relation to any property, means a condition comparable to its condition immediately before the subsidence damage occurred: Coal Mining Subsidence Act 1991 s 19(4).

5 Ie under ibid Pt II (ss 2-21) (as amended): see s 19(2). As to remedial action see PARA 211 ante.

6 Ibid s 19(2). The provisions of Pt II (as amended) apply in relation to the damage as if s 6(2)(a) (see PARA 214 ante) defined 'remedial works' as such works as are necessary for the purpose of so restoring the property, and as if s 10 (as amended) (see PARA 221 ante) were omitted: s 19(2).

7 Ie by virtue of ibid s 19(2): see s 19(3).

8 Ibid s 19(3).

UPDATE

227 Ancient monuments and listed buildings

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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228. Ecclesiastical property etc.

The Church Commissioners¹ are entitled, in addition to any other person entitled, to give a damage notice² in respect of subsidence damage³ to any ecclesiastical property⁴, and where any other such person is the claimant⁵, the Commissioners are to be treated as another person interested⁶ whether or not they give such a notice⁷. Any depreciation payment⁸ in respect of ecclesiastical property which would otherwise fall to be made to the owner⁹ of the property is to be made to the Church Commissioners¹⁰ and applied by them for the purposes for which the proceeds of a sale of the property by agreement would be applicable under any enactment or Measure authorising, or disposing of the proceeds of, such a sale¹¹. Where a depreciation payment, in relation to any property other than ecclesiastical property would otherwise fall to be made to a person whose interest in the property is held for religious purposes, and a request¹² for payment is made to the responsible person¹³ by or on behalf of the representative body¹⁴, the payment must be made to that body¹⁵.

1 As to the Church Commissioners see ECCLESIASTICAL LAW.

2 As to the meaning of 'damage notice' see PARA 212 note 8 ante.

3 For the meaning of 'subsidence damage' see PARA 205 ante.

4 For this purpose, 'ecclesiastical property' means property in England belonging to any ecclesiastical benefice, or being or forming part of a church subject to the jurisdiction of a bishop of any diocese or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction: Coal Mining Subsidence Act 1991 s 20(4).

5 For the meaning of 'claimant' see PARA 212 note 9 ante.

6 For the meaning of 'any other person interested' see PARA 212 note 10 ante.

7 Coal Mining Subsidence Act 1991 s 20(1). As to preventive works on ecclesiastical property see PARA 242 post.

8 *Ibid* s 10 (as amended) (see PARA 221 ante) or s 11 (see PARA 220 ante): see s 20(2). As to depreciation payments see PARAS 219-222 ante.

9 For the meaning of 'owner' see PARA 209 note 5 ante.

10 Coal Mining Subsidence Act 1991 s 20(2)(a).

11 *Ibid* s 20(2)(b).

12 For the meaning of 'request' see PARA 209 note 4 ante.

13 As to the responsible person see PARA 206 ante.

14 'The representative body', in relation to property of any description held for religious purposes, means the body of persons (if any) which, in relation to that property or property of that description, has been notified to the responsible person by the Secretary of State, after consultation with such persons and organisations as he may think appropriate: Coal Mining Subsidence Act 1991 s 20(4). As to the Secretary of State see PARA 4 ante.

15 *Ibid* s 20(3).

UPDATE

228 Ecclesiastical property etc

TEXT AND NOTES--Coal Mining Subsidence Act 1991 s 20 amended: Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 29(1).

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229. Property belonging to protected tenants.

Where property belonging to a protected tenant¹ is affected by subsidence damage and neither he nor any other person would be liable to make good the damage in whole or in part², then subject to certain restrictions³, he is to be treated as a person liable to make good that damage either in whole or in part⁴.

Where in the case of any damaged property it is claimed that a person who⁵ is neither the owner⁶ of, nor liable to make good in whole or in part the damage to, the property falls to be treated as so liable by virtue of the provision described above, and a damage notice is given in respect of the property, whether by that or any other person, that person is not to be treated as so liable except where⁷:

- 115 (1) it is agreed between the person in question and his landlord before the end of the period of one month beginning with the first giving of a damage notice in respect of the property, or it is determined in proceedings⁸ begun before the end of that period, that he is a protected tenant and the property belongs to him⁹; and
- 116 (2) notice¹⁰ of that agreement or of the beginning of those proceedings has been given to the responsible person¹¹ before the end of that period¹².

1 For the purposes of the Coal Mining Subsidence Act 1991 s 21, Sch 3 (both as amended), property affected by subsidence damage belongs to a protected tenant if he would have been entitled under any enactment contained in the relevant Act or Acts to remove the property, or to be paid compensation in respect of it by his landlord, if his tenancy had terminated immediately before the damage occurred: s 21(2). For the meaning of 'subsidence damage' see PARA 205 ante. For these purposes, 'protected tenant' means a person who is: (1) a tenant for the purposes of the Landlord and Tenant Act 1927 Pt I (ss 1-17) (as amended) (see LANDLORD AND TENANT) or the Agricultural Holdings Act 1986 (see AGRICULTURAL LAND vol 1 (2008) PARA 323); or (2) a tenant under a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 (see AGRICULTURAL LAND vol 1 (2008) PARA 302): Coal Mining Subsidence Act 1991 s 21(3)(a), (aa) (added by the Agricultural Tenancies Act 1995 s 40, Schedule para 36). References, in relation to a protected tenant, to the relevant Act or Acts are to be construed accordingly: Coal Mining Subsidence Act 1991 s 21(3) (as so amended).

Any question arising in relation to any property as to whether or not any person is a protected tenant is to be determined as if it had arisen under the relevant Act or Acts: Sch 3 para 1(4). Where the liability of the responsible person to comply with any statutory requirement relating to remedial action (see Pt II (ss 2-21) (as amended)) in consequence of the giving of a damage notice depends on the determination of the question whether or not a person falls to be treated as liable, the responsible person is not be required to comply with that requirement until it is established whether or not that person falls to be so treated: Sch 3 para 2(3). As to the meaning of 'damage notice' see PARA 212 note 8 ante. For the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 et seq post.

2 le apart from the provisions of ibid Sch 3 (as amended): see s 21(1).

3 See the text to notes 5-12 infra.

4 Coal Mining Subsidence Act 1991 s 21(1), Sch 3 para 1(1). The protected tenant is liable to meet such part of the cost of making good the whole of the damage as is given by the formula set out in Sch 3 para 1(3) if, by reason of any other enactment contained in the relevant Act or Acts, compensation in respect of the damaged property would have been payable to the protected tenant of less than the amount provided for by whichever of the following enactments would otherwise have been applicable: (1) the Landlord and Tenant Act 1927 s 1(1) (as amended); (2) the Agricultural Holdings Act 1986 s 66(1), Sch 9 Pt I para 2(1); and (3) the Agricultural Tenancies Act 1995 s 20: Coal Mining Subsidence Act 1991 Sch 3 para 1(1), (2) (amended by the Agricultural Tenancies Act 1995 Schedule para 37). As to the enactments mentioned in heads (1)-(3) supra see AGRICULTURAL LAND.

The formula for calculating the cost of making good the damage is:

$$P = \frac{C}{A}$$

where P is such part of the cost of making good the whole of the damage to the property as the protected tenant is to be treated as a person liable to meet; C is the compensation which would have been payable to the protected tenant by reason of the other enactment contained in the relevant Act or Acts; A is the amount provided for by whichever of the enactments mentioned in heads (1)-(3) supra would otherwise have been applicable: Coal Mining Subsidence Act 1991 Sch 3 para 1(3).

Any question arising as to the amount of any compensation which would have been payable to the protected tenant under the relevant Act or Acts is to be determined as if it had arisen under the relevant Act or Acts: Sch 3 para 1(4).

5 le apart from the provisions of *ibid* Sch 3 (as amended): see Sch 3 para 2(1).

6 For the meaning of 'owner' see PARA 209 note 5 ante.

7 Coal Mining Subsidence Act 1991 Sch 3 para 2(1).

8 le proceedings by virtue of *ibid* Sch 3 para 1(4): see Sch 3 para 2(2)(a). Proceedings to determine by arbitration whether or not a person is a protected tenant by virtue of the Agricultural Holdings Act 1986 are deemed to be begun when either (1) an arbitrator has been appointed by agreement between that person and his landlord; or (2) an application for the appointment of an arbitrator has been made by that person or his landlord to the President of the Royal Institution of Chartered Surveyors or, as the case may be, the Secretary of State: Coal Mining Subsidence Act 1991 Sch 3 para 2(4). As to arbitration generally see ARBITRATION vol 2 (2008) PARA 1201 et seq.

9 *Ibid* Sch 3 para 2(2)(a).

10 For the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 et seq post.

11 As to the responsible person see PARA 206 ante.

12 Coal Mining Subsidence Act 1991 Sch 3 para 2(2)(b).

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(c) Dwelling-houses Rendered Uninhabitable

230. Home loss payments.

Where a dwelling-house¹ is affected by subsidence damage², a person displaced³ from it is entitled in certain circumstances to receive a home loss payment from the responsible person⁴ if:

- 117 (1) by reason of deterioration due to the subsidence damage in the condition of the dwelling-house, it cannot reasonably be rendered fit to be used as such⁵; and
- 118 (2) the dwelling-house is not used as such by or with the authority of the person who immediately before the deterioration in its condition was entitled to possession of it⁶.

A person is not entitled to a home loss payment unless, throughout the period of one year ending with the date of displacement, he has been in occupation of the dwelling-house (or a substantial part of it) as his only or main residence, and he has been in such occupation by virtue of a specified interest or right⁷. A person is also not entitled to a home loss payment so long as any application made by him to challenge the validity of a notice⁸ given by the responsible person has neither been determined nor withdrawn⁹. The responsible person is not liable to make such a payment except on a claim¹⁰ made by the person entitled to it giving such particulars as the responsible person may reasonably require to determine whether the payment should be made and, if so, its amount¹¹. Provision is made for the calculation of the amount of the home loss payment¹².

Where a person is entitled to such a payment, it must be made within the period of three months beginning with the date on which the claim is made¹³. Where a person entitled to a home loss payment dies without having claimed it, a claim may be made, by a person¹⁴ who, throughout a period of not less than one year ending with the date of displacement of the deceased, has resided in the dwelling-house (or a substantial part of it) as his only or main residence, and is entitled to benefit by virtue of testamentary dispositions taking effect on, or the law of intestate succession or the right of survivorship between joint tenants as applied to, the death of the deceased¹⁵. Where there are two or more persons entitled to make a claim to a home loss payment in respect of the same dwelling-house¹⁶ the payment to be made on each claim is equal to the whole amount of the home loss payment divided by the number of such persons¹⁷.

1 For the meaning of 'dwelling-house' see PARA 218 note 8 ante. Where the claimant has successively been in occupation of different dwelling-houses in the same building, being dwelling-houses consisting of a room or rooms not constructed or structurally adapted for use as a separate dwelling, the Coal Mining Subsidence Act 1991 s 22(1), Sch 4 paras 1(2), 3(3)-(5) have effect as if those dwelling-houses were the same dwelling-house: Sch 4 para 3(6). For the meaning of 'the claimant' see PARA 212 note 9 ante.

2 For the meaning of 'subsidence damage' see PARA 205 ante.

3 The provisions of the Coal Mining Subsidence Act 1991 Sch 4 (as amended) do not apply in any case where the displacement occurred before 30 November 1991: s 53(1), Sch 7 para 3(1)(a).

4 Ibid s 22(1), Sch 4 para 1(1). As to the responsible person see PARA 206 ante.

5 Ibid s 22(2)(a).

6 Ibid s 22(2)(b).

7 Ibid Sch 4 para 1(2). However, if those conditions are satisfied on the date of displacement, a discretionary payment may be made to him of an amount not exceeding that to which he would have been entitled if he had satisfied those conditions throughout that period: Sch 4 para 1(2). As to the calculation of the period see Sch 4 para 3(3), (4).

The specified interests and rights mentioned in the text are:

71 (1) any interest in the dwelling-house (Sch 4 para 1(4)(a));

72 (2) a right to occupy the dwelling-house as a statutory tenant within the meaning of the Rent Act 1977 or under a restricted contract within the meaning of that Act or a contract which would be such a contract if the contract or dwelling-house were not excluded by s 19(4) or s 19(5)(b) (s 19 repealed in relation to contracts entered into after 15 January 1989) (Coal Mining Subsidence Act 1991 Sch 4 para 1(4)(b));

73 (3) a right to occupy the dwelling-house under a licence to which the Housing Act 1985 Pt IV (ss 79-117) (as amended) (secure tenancies), or the Housing Act 1996 Pt V Ch I (ss 124-143) (introductory tenancies) applies (Coal Mining Subsidence Act 1991 Sch 4 para 1(4)(d) (amended by the Housing Act 1996 (Consequential Amendments) Order 1997, SI 1997/74, art 2, Schedule para 7));

74 (4) a right to occupy the dwelling-house under a contract of employment (Coal Mining Subsidence Act 1991 Sch 4 para 1(4)(e)).

Where an interest in a dwelling-house is vested in trustees (other than a sole tenant for life within the meaning of the Settled Land Act 1925) and a person beneficially entitled (whether directly or derivatively) under the trust is entitled or permitted by reason of his interest to occupy the dwelling-house, he is to be treated for these purposes as occupying it by virtue of an interest in the dwelling-house: Coal Mining Subsidence Act 1991 Sch 4 para 1(5). As to the phasing out of strict settlements and the introduction of the 'trust of land' see the Trusts of Land and Appointment of Trustees Act 1996 s 2(1); and PARA 285 note 2 post.

8 Ie an application under the Coal Mining Subsidence Act 1991 s 23(1), Sch 5 para 3(3) to challenge the validity of a notice given by the responsible person under Sch 5 para 3(1)(b) (see PARA 231 post): see Sch 4 para 1(3).

9 Ibid Sch 4 para 1(3).

10 For the meaning of 'claim' see PARA 212 note 6 ante.

11 Coal Mining Subsidence Act 1991 Sch 4 para 3(1).

12 See ibid Sch 4 para 2. Where a person who on the date of displacement is occupying, or is treated for the purposes of Sch 4 para 1 as occupying, the dwelling-house by virtue of an 'owner's interest' (ie the interest of a person who is an owner as defined in the Acquisition of Land Act 1981 s 7 (as amended) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 560): Coal Mining Subsidence Act 1991 Sch 4 para 2(5)), the amount of the home loss payment is the aggregate of:

75 (1) 10% of the value of his interest in the dwelling-house or, as the case may be, the interest in the dwelling-house vested in trustees, subject to a maximum of £15,000 and a minimum of £1,500 (Sch 4 para 2(1)(a)); and

76 (2) his reasonable expenses in removing from the dwelling-house (Sch 4 para 2(1)(b)).

In the case of any other person, the amount of the home loss payment is the aggregate of £1,500 and his reasonable expenses in removing from the dwelling-house: Sch 4 para 2(2). References to the value of an interest in the dwelling-house are to be taken to be a reference to the value of that interest immediately before the deterioration in the condition of the dwelling-house: see s 14(4), Sch 1 para 2, Sch 4 para 2(4). The Secretary of State may from time to time by regulations prescribe a different maximum or minimum for the purposes of head (1) supra and a different amount for the purposes of head (2) supra: Sch 4 para 2(3). At the date at which this volume states the law no such regulations had been made. As to the Secretary of State see PARA 4 ante; and as to the Secretary of State's power to make regulations or orders see PARA 204 ante.

13 Ibid Sch 4 para 3(2).

14 The person must not be under the age of 18 years: see *ibid* Sch 4 para 3(5).

15 *Ibid* Sch 4 para 3(5). As to testamentary dispositions and intestate succession see *WILLS* vol 50 (2005 Reissue) PARA 301 et seq; *EXECUTORS AND ADMINISTRATORS* vol 17(2) (Reissue) PARA 583 et seq. As to survivorship between joint tenants see *REAL PROPERTY*; *WILLS* vol 50 (2005 Reissue) PARA 331.

16 *Ie* whether by virtue of joint occupation or of *ibid* Sch 4 para 3(5) (see the text to notes 14-15 *supra*): see Sch 4 para 3(7).

17 *Ibid* Sch 4 para 3(7).

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231. Relief for temporary dispossession.

Where a dwelling-house¹ is affected by subsidence damage², a person temporarily dispossessed³ of the dwelling-house has a right to certain relief as respects any period during which⁴:

- 119 (1) by reason of deterioration due to the subsidence damage in the condition of the dwelling-house, and having regard to the time which will be required to remedy that deterioration, the dwelling-house is not in a reasonably fit state for it to be used as such⁵; and
- 120 (2) the dwelling-house is not used as such by or with the authority of the person who immediately before the deterioration in its condition was entitled to possession of it⁶.

In the case of any resident⁷, the responsible person⁸, so long as the period of dispossession⁹ lasts, is under an obligation at all times¹⁰:

- 121 (a) to make available alternative living accommodation which is of a standard comparable to the general standard of the housing accommodation under the management of the local authority¹¹ and is otherwise reasonable having regard to all the circumstances, including the probable duration of the period of dispossession¹²; or
- 122 (b) to pay to the resident the amount, if any, by which the aggregate expenditure reasonably incurred by him by way of rent¹³, food, living accommodation, heating, light and other household expenses exceeds what it would have been if the subsidence damage had not occurred and he had continued to reside in the dwelling-house¹⁴.

The responsible person is not under any such obligation in respect of any part of the period of dispossession during which, irrespective of the subsidence damage, the resident in question would not have been residing at the dwelling-house¹⁵. Where the responsible person is under an obligation under head (a) or head (b) above¹⁶, he is also under an obligation to pay the resident's reasonable expenses in removing from the dwelling-house of which he is temporarily dispossessed¹⁷, and to pay him any expenses reasonably incurred by him in consequence of the temporary dispossession¹⁸.

Subject to certain exceptions¹⁹, the responsible person's obligations under head (a) and head (b) above cease towards any resident notwithstanding that the period of dispossession has not expired (i) if the occupier²⁰ has ceased (otherwise than by reason of his death) to be entitled to possession of the dwelling-house or, as the case may be, of the site of it²¹; or (ii) on the expiration of a period of six months from the service by the responsible person on the resident in question of notice²² of the responsible person's opinion that the period of dispossession will continue indefinitely or will be unreasonably long²³, or that the resident in question will not resume residence at the dwelling-house or on its site at the expiration of that period²⁴.

The responsible person is not under any obligation by virtue of head (a) or head (b) above unless either the owner or the occupier of the dwelling-house is a resident and (A) has given

notice²⁵ to the responsible person, within the prescribed time and containing prescribed particulars²⁶, that in his opinion that by reason of deterioration due to the subsidence damage in the condition of the dwelling-house, and having regard to the time required to remedy that deterioration, the house is not in a reasonably fit state for it to be used as such²⁷; and (B) has afforded the responsible person reasonable facilities to inspect the dwelling-house so far as he was in a position to afford such facilities²⁸.

Where the responsible person has made alternative living accommodation available to a resident²⁹, the responsible person is entitled to possession of that accommodation in certain circumstances³⁰. He is also entitled to recover as a civil debt from the resident in question any amount by which the aggregate expenditure incurred by him by way of rent is less than it would have been if the subsidence damage had not occurred and he had continued to reside in the dwelling-house³¹, but the responsible person is not entitled to recover an amount in excess of that which would have been payable by way of rent for the alternative living accommodation if it had been provided by the local authority³².

Where no damage notice has been given in respect of the dwelling-house, or the responsible person has elected to make a discretionary payment in lieu³³ or a discretionary depreciation payment³⁴ or is obliged to make a depreciation payment³⁵, the responsible person may exercise in the name of the occupier any right with respect to the repair of the dwelling-house exercisable by the occupier against anyone other than the responsible person³⁶.

1 For the meaning of 'dwelling-house' see PARA 218 note 8 ante.

2 For the meaning of 'subsidence damage' see PARA 205 ante.

3 The Coal Mining Subsidence Act 1991 s 23(1), Sch 5 does not apply in any case where the period of dispossession began before 30 November 1991 (s 53(1), Sch 7 para 3(1)(b)), and nothing in the Act affects the operation of the Coal-Mining (Subsidence) Act 1957 (repealed) in relation to any case where the period of dispossession began before that date (Coal Mining Subsidence Act 1991 Sch 7 para 3(2)(a)).

4 Ibid s 23(1).

5 Ibid s 23(2)(a).

6 Ibid s 23(2)(b).

7 For these purposes, 'resident' means any person ordinarily resident in the dwelling-house during the period immediately preceding the deterioration in its condition: ibid Sch 5 para 1.

8 As to the responsible person see PARA 206 ante.

9 For these purposes, the 'period of dispossession' means the period during which the requirements of the Coal Mining Subsidence Act 1991 s 23(2) are satisfied: Sch 5 para 1.

10 Subject to ibid Sch 5 para 4(2), (3), and without prejudice to his liability under Sch 5 para 2(1) in respect of any part of the period of dispossession falling before the making of his election, the responsible person may elect which of the two courses open to him set out in head (a) and head (b) in the text he will for the time being adopt in any particular case: Sch 5 para 2(3).

11 For these purposes, the 'local authority' means the local authority within the meaning of the Housing Act 1985 (see HOUSING vol 22 (2006 Reissue) PARA 10) in whose area the dwelling-house is situated: Coal Mining Subsidence Act 1991 Sch 5 para 1.

12 Ibid Sch 5 para 2(1)(a).

13 For these purposes, 'rent' includes any mortgage interest, interest on a heritable security, service charges or water charges payable in respect of a dwelling-house and any community charges payable in respect of periods of residence in, or periods of having an interest in, a dwelling-house: ibid Sch 5 para 1. Note that no person is subject to a community charge in England and Wales in respect of any day falling after 31 March 1993: see the Local Government Finance Act 1992 s 100(1), (2)(a); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 227. For financial years from 1 April 1993, residents of chargeable dwellings in England and

Wales are liable to pay council tax in accordance with the provisions of Pt I (ss 1-69) (as amended): see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 231 et seq.

14 Coal Mining Subsidence Act 1991 Sch 5 para 2(1)(b).

15 Ibid Sch 5 para 2(2).

16 Ie under ibid Sch 5 para 2(1).

17 Ibid Sch 5 para 2(4)(a).

18 Ibid Sch 5 para 2(4)(b).

19 See ibid Sch 5 para 3(2), (3); and notes 22-23 infra.

20 For these purposes, 'occupier' means the person who immediately before the deterioration in the condition of the dwelling-house was entitled to possession of it: ibid Sch 5 para 1.

21 Ibid Sch 5 para 3(1)(a).

22 Any person upon whom such a notice is served may apply to the county court, which, if satisfied that there are not reasonable grounds for the opinion of the responsible person, may declare the notice to be of no effect: ibid Sch 5 para 3(3). For the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 et seq post.

23 Ibid Sch 5 para 3(1)(b)(i). Where a damage notice (as to which see PARA 212 ante) has been given in respect of the dwelling-house, the responsible person is not entitled under Sch 5 para 3(1)(b)(i) to give a notice: (1) unless the responsible person has elected to make a payment under s 8 (see PARA 218 ante) or s 10 (as amended) (see PARA 221 ante) or is obliged to make a payment under s 11(1) (see PARA 221 ante) (Sch 5 para 3(2)(a)); or (2) while a notice under s 16(2) (see PARA 224 ante) is in force with respect to the dwelling-house (Sch 5 para 3(2)(b)).

24 Ibid Sch 5 para 3(1)(b)(iii).

25 See note 28 infra.

26 See the Coal Mining Subsidence (Notices and Claims) Regulations 1991, SI 1991/2509, reg 4, Sch 2.

27 See the Coal Mining Subsidence Act 1991 s 23(2)(a), Sch 5 para 4(1)(a); and note 28 infra.

28 See ibid Sch 5 para 4(1)(b). As soon as reasonably practicable after receiving such a notice the responsible person must give to that person notice (1) as to whether or not he agrees with that person's opinion; and (2) if he so agrees, as to the manner in which he proposes to discharge his obligations under heads (a) and (b) in the text, and where it appears appropriate to the responsible person to do so, he may serve a separate notice on any other resident: Sch 5 para 4(2). In giving such a notice, the responsible person must not unreasonably refuse any request from a resident to adopt in his case such of the alternatives set out in heads (a) and (b) in the text as is specified in the request: Sch 5 para 4(3). Where the responsible person has given notice to any resident of an intention to adopt either of these alternatives, he must not adopt the other alternative without his consent, which must not be unreasonably withheld: Sch 5 para 4(4).

29 Ie under head (a) in the text.

30 Coal Mining Subsidence Act 1991 Sch 5 para 5(1). In a case falling within head (ii) in the text the responsible person is entitled to possession of the accommodation at the expiration of the period of six months mentioned there: Sch 5 para 5(2)(a). The responsible person is entitled to the possession of the accommodation without prejudice to any of his obligations under head (a) or head (b) in the text or to the provisions of Sch 5 para 4(4) (see the text to note 28 supra) at any time not less than one month after the responsible person has given notice to the resident in question of his intention to take possession (Sch 5 para 5(2)(b)), and where such notice is given the responsible person's obligations under head (a) and head (b) in the text continue until the expiration of the month mentioned in Sch 5 para 5(2)(b), or such longer period as may be specified in the notice, notwithstanding that the period of dispossession may have expired (Sch 5 para 5(3)).

31 Ibid Sch 5 para 5(4). The responsible person is under an obligation to pay to the resident in question:

- 77 (1) any amount by which the aggregate expenditure incurred by him by way of rent is greater than it would have been if the subsidence damage had not occurred and he had continued to reside in the dwelling-house (Sch 5 para 5(5)(a)); and

- 78 (2) any amount by which he shows that the aggregate expenditure reasonably incurred by him by way of food, living accommodation (other than rent), heating, light and other household expenses is greater than it would have been in those circumstances (Sch 5 para 5(5)(b)).

In any case where the responsible person is entitled to recover an amount by virtue of Sch 5 para 5(4), and is under an obligation to pay an amount by virtue of head (2) *supra*, the two amounts are to be set off one against the other and extinguished or reduced accordingly: Sch 5 para 5(6).

32 Ibid Sch 5 para 5(7).

33 See *ibid* s 8; and PARA 218 *ante*.

34 See *ibid* s 10 (as amended); and PARA 221 *ante*.

35 See *ibid* s 11(1); and PARA 220 *ante*.

36 Ibid Sch 5 para 6(1), (2). This right is exercisable during any period while the responsible person is under an obligation by virtue of head (a) and head (b) in the text: see Sch 5 para 6(2).

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232. Care of vacant dwelling-houses.

Where (1) by reason of deterioration due to the subsidence damage¹ in the condition of the dwelling-house², and having regard to the time which will be required to remedy that deterioration, the dwelling-house is not in a reasonably fit state for it to be used as such, and it is not used as such by or with the authority of the person who immediately before the deterioration in its condition was entitled to possession of it³; and (2) notice⁴ of that fact is given to the responsible person⁵ by the occupier⁶, the responsible person must take reasonable steps for (a) preventing or minimising the risk of the house or its contents suffering loss or damage while it is unoccupied; and (b) inspecting the house for the purpose of discovering whether any such loss or damage has occurred⁷. The steps which it may be reasonable to take include, in particular, steps for keeping the dwelling-house weatherproof and secure against persons seeking to enter it as trespassers⁸. However, this ceases to apply on the occurrence of certain specified events⁹ notwithstanding that the statutory requirements continue to be satisfied¹⁰.

Where the responsible person requests permission from the occupier to remove and place in storage at the responsible person's own expense any of the contents of the dwelling-house, the responsible person is not liable¹¹ for any loss or damage to any of those contents as respects which such permission is unreasonably refused¹².

1 For the meaning of 'subsidence damage' see PARA 205 ante.

2 For the meaning of 'dwelling-house' see PARA 218 note 8 ante.

3 See the Coal Mining Subsidence Act 1991 s 23(2); and PARA 231 ante.

4 For the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 et seq post.

5 As to the responsible person see PARA 206 ante.

6 I.e. the person who immediately before the deterioration in the condition of the dwelling-house was entitled to possession of it: see the Coal Mining Subsidence Act 1991 s 24(1).

7 See *ibid* s 24(1), (3). Any claim arising out of a breach of the duty imposed by s 24(3) is to be determined by the county court in England and Wales: s 24(5). Nothing in s 24 affects any liability of the responsible person arising apart from the provisions of s 24: s 24(6).

8 See *ibid* s 24(3).

9 The specified events are that: (1) the occupier has ceased (otherwise than by reason of his death) to be entitled to possession of the dwelling-house or, as the case may be, of its site; or (2) the expiration of a period of six months from the service by the responsible person on the resident of notice of its opinion that the period of dispossession will continue indefinitely or will be unreasonably long, or that the resident will not resume residence at the expiration of that period: see *ibid* s 23(1), Sch 5 para 3(1); and PARA 231 ante.

10 *Ibid* s 24(2).

11 I.e. by virtue of *ibid* s 24(3): see s 24(4).

12 *Ibid* s 24(4).

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233. Compensation for inconvenience during works.

The Secretary of State¹ may, after consultation with the responsible person², make regulations³ requiring the payment by the responsible person of compensation for any inconvenience or disturbance which may be caused, as a result of the responsible person executing the remedial works⁴, to persons residing in dwelling-houses affected by subsidence damage⁵. In particular, a person is entitled to claim compensation⁶ if:

- 123 (1) he is the owner⁷ of, or any other person liable to make good in whole or in part the damage to, a dwelling-house which has been affected by subsidence damage⁸;
- 124 (2) a schedule of remedial works has come into effect in relation to that damage and the remedial works specified in it have been, or are being, carried out by or on behalf of the responsible person⁹;
- 125 (3) the total cost of the remedial works specified in the schedule of remedial works at the time the person makes a claim exceeds £3,000¹⁰;
- 126 (4) the remedial works were not, or have not been, completed within six months¹¹ from the date of their commencement¹²; and
- 127 (5) the person has resided in the dwelling-house for a total period of six months¹³ during the time from the commencement of the remedial works¹⁴.

A claim for compensation must be made to the responsible person in writing after the expiry of six months¹⁵ from the date of commencement of the remedial works¹⁶.

1 As to the Secretary of State see PARA 4 ante; and as to the Secretary of State's power to make regulations or orders see PARA 204 ante.

2 As to the responsible person see PARA 206 ante.

3 The Coal Mining Subsidence (Blight and Compensation for Inconvenience During Works) Regulations 1994, SI 1994/2564, make provision with respect to: (1) the making of claims for compensation under the regulations; (2) the descriptions of persons who may make a claim for such compensation; (3) the matters in respect of which, and any circumstances in which, such compensation is or is not to be payable; and (4) the sums, or the method of determining the sums, payable by way of such compensation: see the Coal Mining Subsidence Act 1991 s 25(2)(a)-(d); the Coal Mining Subsidence (Blight and Compensation for Inconvenience During Works) Regulations 1994, SI 1994/2564, regs 5-7; and the text to notes 6-16 infra. For the meaning of 'claim' see PARA 212 note 6 ante.

4 I.e. the remedial works specified in the Coal Mining Subsidence Act 1991 s 6(2): see PARA 214 ante. As to the meaning of 'works' see PARA 205 note 3 ante.

5 Ibid s 25(1). For the meaning of 'subsidence damage' see PARA 205 ante.

6 The responsible person must pay to any person entitled to such compensation:

79 (1) 10% of the total cost of the remedial works specified in the schedule of remedial works at the time those works are completed (Coal Mining Subsidence (Blight and Compensation for Inconvenience During Works) Regulations 1994, SI 1994/2564, reg 7(1)(a)); and

- 80 (2) interest on that sum at the applicable rate for the period commencing on the date on which the person claimed compensation and expiring on the date on which he received it (reg 7(1)(b)).

For these purposes, 'the responsible person' means, in relation to subsidence damage to a dwelling-house, the person who, by virtue of the Coal Industry Act 1994 s 43 (see PARA 207 ante) or s 44 (see PARA 209 ante) is the responsible person in relation to that damage: Coal Mining Subsidence (Blight and Compensation for Inconvenience During Works) Regulations 1994, SI 1994/2564, reg 5. As to the applicable rate see PARA 219 note 16 ante. As to the schedule of remedial works see PARA 214 ante.

- 7 For the meaning of 'owner' see PARA 209 note 5 ante.

- 8 Coal Mining Subsidence (Blight and Compensation for Inconvenience During Works) Regulations 1994, SI 1994/2564, reg 6(1)(a).

- 9 Ibid reg 6(1)(b).

- 10 Ibid reg 6(1)(c).

- 11 Any period during which the carrying out of remedial works has ceased (1) at the request of the owner of, or any other person interested in, the dwelling-house; (2) on account of any conduct on the part of any person residing in the dwelling-house; or (3) in accordance with a stop notice, must not be counted in the determination of any period of six months for the purposes of heads (4)-(5) in the text or *ibid* reg 7(2) (see the text to note 16 *infra*): reg 6(2). As to the meaning of 'stop notice' see PARA 224 note 11 ante. For the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 *et seq post*.

- 12 Ibid reg 6(1)(d).

- 13 See note 11 *supra*.

- 14 Coal Mining Subsidence (Blight and Compensation for Inconvenience During Works) Regulations 1994, SI 1994/2564, reg 6(1)(e). Where a person has made a claim for compensation, there must not be counted for the purpose of determining the period of residence in the dwelling-house in question of any other person for the purpose of head (5) in the text any period before the completion of the remedial works to which the claim of the first person referred to above relates during which the other person resides in the dwelling-house: reg 6(3).

- 15 See note 11 *supra*.

- 16 Coal Mining Subsidence (Blight and Compensation for Inconvenience During Works) Regulations 1994, SI 1994/2564, reg 7(2).

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(d) Agricultural Losses

234. Farm loss payments.

Where land constituting or included in an agricultural unit¹ is affected by subsidence damage², an occupier displaced³ from the land has a right in certain circumstances, to receive a farm loss payment if, by reason of deterioration due to the damage in the condition of the land, the land cannot profitably be used for agricultural purposes⁴. If any person in occupation of the agricultural unit who has an owner's interest⁵ is displaced from the whole, or a sufficient part⁶, of the land affected by the subsidence damage and, not more than three years after the date of displacement, he begins to farm a new agricultural unit elsewhere in Great Britain⁷, he is entitled to receive a farm loss payment from the responsible person⁸.

No farm loss payment may be made to any person unless, on the date on which he begins to farm the new unit, he is in occupation of the whole of that unit in right of a freehold interest in it or a tenancy of it, not having been entitled to any such interest or tenancy before the date of displacement⁹. The responsible person is not liable to make a farm loss payment except on a claim¹⁰ made by the person entitled to it before the end of the period of one year beginning with the date on which he begins to farm the new unit¹¹.

The amount of any farm loss payment is equal to the average annual profit¹² derived from the use for agricultural purposes of the agricultural land comprised in the land affected¹³, but where the value of the agricultural land comprised in the land affected exceeds the value of the agricultural land comprised in the new unit, the amount of the farm loss payment is reduced proportionately¹⁴.

A claim for farm loss payment must be made in the prescribed form, and contain the prescribed particulars¹⁵. Where a person dies before the expiration of the period for making a claim and would have been entitled to such a payment if he had made a claim within that period, a claim may be made, before the expiration of that period, by his personal representative¹⁶.

Special provisions apply where the land is occupied for the purposes of a partnership firm¹⁷.

1 'Agricultural unit', in relation to England and Wales, has the meaning given by the Town and Country Planning Act 1990 s 171(1) (see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 987); 'agriculture', 'agricultural' and 'agricultural land', in relation to England and Wales, have the meanings given by the Agriculture Act 1947 s 109 (see AGRICULTURAL LAND vol 1 (2008) PARA 324); Coal Mining Subsidence Act 1991 s 52(1).

2 For the meaning of 'subsidence damage' see PARA 205 ante.

3 The Coal Mining Subsidence Act 1991 s 26, Sch 6 (as amended) does not apply in any case where the displacement occurred before 30 November 1991: s 53(1), Sch 7 para 3(1)(a).

4 See *ibid* s 26, Sch 6 (as amended); and the text and notes 5-17 *infra*.

5 For these purposes, 'owner's interest' means a freehold interest or a tenancy where his interest is as tenant for a year or from year to year or a greater interest: *ibid* Sch 6 para 1(2).

6 'Sufficient part' means not less than 0.5 hectares or such area as the Secretary of State may by order specify: *ibid* Sch 6 para 1(2). As to the Secretary of State see PARA 4 ante; and as to the Secretary of State's power to make regulations or orders see PARA 204 ante.

7 For the meaning of 'Great Britain' see PARA 1 note 1 ante.

8 Coal Mining Subsidence Act 1991 Sch 6 para 1(1). As to the responsible person see PARA 206 ante.

A farm loss payment carries interest at the applicable rate (if any) from the date of displacement until payment but any period of delay in determining the amount of any such payment which is attributable to unreasonable conduct on the part of that person is to be disregarded: Sch 6 para 3(5) (amended by the Coal Industry Act 1994 s 67(1), Sch 9 para 41(4)). As to the applicable rate see PARA 219 note 16 ante.

9 Coal Mining Subsidence Act 1991 Sch 6 para 1(3). No farm loss payment may be made to any person who is entitled to a payment under s 28 (see PARA 236 post) in respect of land which consists of or includes the land from which he was displaced: Sch 6 para 1(4).

10 For the meaning of 'claim' see PARA 212 note 6 ante.

11 See the Coal Mining Subsidence Act 1991 Sch 6 paras 1(1), 3(1).

12 The profit is computed by reference to the profits for the three years ending with the date of displacement or, if the person concerned has then been in occupation for a shorter period, that period: see *ibid* Sch 6 para 2(1).

13 See *ibid* Sch 6 para 2(1), (2). In calculating the profits a sum equal to the rent that might reasonably be expected to be payable in respect of the agricultural land comprised in the land affected if it were let for agricultural purposes to a tenant responsible for rates, repairs and other outgoings must be deducted; and that deduction must be made whether or not the land is in fact let and, if it is, must be made to the exclusion of any deduction for the rent actually payable: Sch 6 para 2(3).

14 *Ibid* Sch 6 para 2(4). For these purposes, the value of any land is to be determined:

81 (1) on the basis of its value as land used solely for agriculture (Sch 6 para 2(5)(a));

82 (2) by reference to the condition of the land and its surroundings and to prices current (a) in the case of the land comprised in the land affected, on the date of displacement; (b) in the case of land comprised in the new unit, on the date on which the person concerned begins to farm the new unit (Sch 6 para 2(5)(b)); and

83 (3) without regard to the principal dwelling, if any, comprised in the same agricultural unit as that land (Sch 6 para 2(5)(c)).

Schedule 1 para 2 (see PARA 219 ante) applies for the purpose of determining the value of any land for the purposes of Sch 6 para 2(4) as it applies for the purpose of determining the value of a unit of property at any time for the purposes of s 10 (as amended) (see PARA 221 ante) or s 11 (see PARA 220 ante): Sch 6 para 2(6).

15 See *ibid* Sch 6 para 3(2); and the Coal Mining Subsidence (Notices and Claims) Regulations 1991, SI 1991/2509, reg 5, Sch 3.

16 Coal Mining Subsidence Act 1991 Sch 6 para 3(4).

17 Where the agricultural unit containing the land affected is occupied for the purposes of a partnership firm *ibid* Sch 6 paras 1, 2 have effect in relation to the firm and not the partners individually (any interest of a partner in the land acquired being treated as an interest of the firm) except that the requirements in Sch 6 para 1 as to the new unit are to be treated as complied with in relation to the firm as soon as they are complied with by any one of the persons who were members of the firm: Sch 6 para 3(3).

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235. Crop loss payments.

Where at any time land constituting or included in an agricultural unit¹ is affected by subsidence damage², for each year³ or part of a year falling within the period beginning with that time and ending with the discharge by the responsible person⁴ of his remedial obligation⁵ with respect to the damage, the responsible person is under an obligation to make to the occupier⁶ of the unit a payment for the loss of return from crops of the amount given by the specified formula⁷. Similarly, for each year or part of a year falling within that period, the responsible person is under an obligation to make to the occupier of the unit a payment for the loss of yield from land used for pasture of the amount given by another specified formula⁸.

The responsible person is not liable to make a crop loss payment except on a claim⁹ made by the person entitled to it within the period of 12 months beginning with the end of the year or part of a year to which the payment relates¹⁰. Where such a claim is made, the responsible person may, by notice¹¹ given to any person who is entitled to give a damage notice¹² in respect of the subsidence damage, elect to treat that claim as if it were also such a notice given by that person in respect of that damage¹³.

A crop loss payment carries interest at the applicable rate (if any) from the date of the claim on which the payment is made until payment but any period of delay in determining the amount of any such payment which is attributable to unreasonable conduct on the part of that person is disregarded¹⁴.

1 For the meaning of 'agricultural unit' see PARA 234 note 1 ante.

2 For the meaning of 'subsidence damage' see PARA 205 ante.

3 'Year' means a calendar year: Coal Mining Subsidence Act 1991 s 27(8). Section 27 (as amended) does not apply as respects any calendar year or part of such a year falling before 30 November 1991: s 53(1), Sch 7 para 3(1)(c).

4 As to the responsible person see PARA 206 ante.

5 As to the meaning of 'remedial obligation' see PARA 211 note 3 ante.

6 In relation to any agricultural activity carried on on land constituting or included in an agricultural unit, the person having the right to carry it on is to be treated as the occupier of that unit: Coal Mining Subsidence Act 1991 s 27(8).

7 Ibid s 27(1), (2). The specified formula is:

$$P = R - S + E$$

where P is the amount payable under s 27(2); R is any amount by which the occupier's return from crops sown or planted in that year or part of a year is less than it might reasonably have been expected to have been if the subsidence damage had not occurred; S is any amount by which his expenses in respect of crops so sown or planted are less than they might reasonably have been expected to have been if the damage had not occurred; and E is the amount of any expenses incurred by him in that year or part of a year in taking reasonable steps to protect crops grown in a greenhouse affected by the damage: s 27(2). The following are to be disregarded for the purposes of s 27(2):

84 (1) any crops which would normally have been harvested before the subsidence damage became evident (s 27(4)(a));

85 (2) any crops which were or would have been sown or planted after an election by the responsible person under s 10 (as amended) (see PARA 221 ante) to make a depreciation payment in respect of the damage (s 27(4)(b)); and

86 (3) if all reasonable steps have not been taken to protect them, any crops grown in a greenhouse affected by the damage (s 27(4)(c)).

'Greenhouse' includes any building or structure designed to afford protection from the weather or to secure the retention of heat: s 27(8).

8 Ibid s 27(3). The specified formula is:

$$P = R - S$$

where P is the amount payable under s 27(3); R is any amount by which the occupier's yield from land used for pasture in that year or part of a year is less than it might reasonably have been expected to have been if the subsidence damage had not occurred; and S is any amount by which his expenses in respect of land used for pasture are less than they might reasonably have been expected to have been if the damage had not occurred: s 27(3). Any use of land for pasture which was or would have been so used after an election by the responsible person under s 10 (as amended) (see PARA 221 ante) to make a depreciation payment in respect of the damage is to be disregarded for the purposes of s 27(3): see s 27(4).

9 For the meaning of 'claim' see PARA 212 note 6 ante.

10 Coal Mining Subsidence Act 1991 s 27(5).

11 For the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 et seq post.

12 As to the meaning of 'damage notice' see PARA 212 note 8 ante.

13 Coal Mining Subsidence Act 1991 s 27(6).

14 Ibid s 27(7) (amended by the Coal Industry Act 1994 s 67(1), Sch 9 para 41(1)). As to the applicable rate see PARA 219 note 16 ante.

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236. Payments for tenant farmers.

Where the responsible person¹ makes a depreciation payment² to the owner³ of any agricultural land⁴ which is subject to a tenancy, he must also make a payment to the tenant of the amount given by the specified formula⁵. Where the responsible person makes such a payment to a tenant who has been displaced from the whole or a sufficient part⁶ of the land affected by the subsidence damage⁷, he must also make a payment to him equal to the compensation which would have been payable to him for any loss or injury sustained by him on the assumptions that:

- 128 (1) the land had been compulsorily acquired at the relevant time⁸;
- 129 (2) the tenant had no greater interest in the land than as tenant for a year or from year to year⁹;
- 130 (3) the land had not been affected by the subsidence damage¹⁰; and
- 131 (4) the displacement had been caused by the compulsory acquisition¹¹.

1 As to the responsible person see PARA 206 ante.

2 As to depreciation payments see PARAS 219-222 ante.

3 For the meaning of 'owner' see PARA 209 note 5 ante.

4 For the meaning of 'agricultural land' see PARA 234 note 1 ante.

5 Coal Mining Subsidence Act 1991 s 28(1). The specified formula is:

$$P = (C + S) \times \frac{D}{V}$$

where P is the amount payable under s 28; C is the compensation which, on the assumptions mentioned in heads (1)-(3) in the text, would have been payable to the tenant for the value of his unexpired term or interest in the land; S is the sum which, on those assumptions, would have been payable to the tenant under the Agriculture (Miscellaneous Provisions) Act 1968 s 12 (as amended) (see AGRICULTURAL LAND vol 1 (2008) PARA 455) (additional payments on compulsory acquisition of agricultural holdings); D is the amount of the depreciation payment made to the owner of the land; V is what would have been the value of the land at the relevant time if it had not been affected by the subsidence damage: Coal Mining Subsidence Act 1991 s 28(1).

Schedule 1 para 2 (as amended) (see PARA 219 ante) applies for the purpose of determining the value mentioned in s 28(1) as it applies for the purpose of determining the value of a unit of property at any time for the purposes of s 10 (as amended) (see PARA 221 ante) or s 11 (see PARA 220 ante); and Sch 1 para 4 (interest on depreciation payments) applies in relation to any payment under s 28 as if the payment were a depreciation payment, and as if the relevant time in relation to the payment were the time immediately after the making of the claim: s 28(4).

6 For these purposes, 'sufficient part' means not less than 0.5 hectares or such area as the Secretary of State may by order specify: *ibid* s 28(5). As to the Secretary of State see PARA 4 ante; and as to the Secretary of State's power to make regulations or orders see PARA 204 ante.

7 For the meaning of 'subsidence damage' see PARA 205 ante.

8 Coal Mining Subsidence Act 1991 s 28(2)(a), (3)(a). For these purposes, the 'relevant time' means the relevant time for the purposes of s 14(4), Sch 1 para 3 (see PARA 219 ante): s 28(5). Any reference to compensation is a reference to compensation under the Compulsory Purchase Act 1965 s 20 (as amended) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 699 et seq): Coal Mining Subsidence Act 1991 s 28(5).

9 Ibid s 28(2)(a), (3)(b).

10 Ibid s 28(2)(a), (3)(c).

11 Ibid s 28(2)(b).

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(e) Blighted Property

UPDATE

236 Payments for tenant farmers

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

237. Property affected by blight.

The Secretary of State¹ may, after consultation with the responsible person², make regulations³ with respect to the action to be taken by the responsible person for alleviating cases of hardship suffered as a result of property being blighted by subsidence damage⁴ or the possibility of such damage⁵. The action which may be required is: (1) the purchase of any blighted property at a price equivalent to its unblighted value⁶; or (2) the payment of an amount equivalent to the difference between the value of any such property and its unblighted value⁷. Regulations may make provision as to:

- 132 (a) the making of claims⁸ under the regulations and the descriptions of persons who may make them⁹;
- 133 (b) the descriptions of property in respect of which such claims may be made and the circumstances in which such property is to be regarded as blighted for the purposes of the regulations¹⁰;
- 134 (c) the circumstances in which action is or is not required to be taken (including the circumstances in which a person is to be regarded as suffering hardship)¹¹;
- 135 (d) the determination of the value or unblighted value of any blighted property¹².

1 As to the Secretary of State see PARA 4 ante.

2 As to the responsible person see PARA 206 ante.

3 See the Coal Mining Subsidence (Blight and Compensation for Inconvenience During Works) Regulations 1994, SI 1994/2564; and PARA 238 post. As to the Secretary of State's power to make regulations or orders see PARA 204 ante.

4 For the meaning of 'subsidence damage' see PARA 205 ante.

5 Coal Mining Subsidence Act 1991 s 29(1).

6 Ibid s 29(2)(a). For these purposes, 'unblighted value' in relation to any blighted property, means the value which it would have if it were not blighted: s 29(4). As to the obligation to purchase a blighted dwelling see PARA 238 post.

7 Ibid s 29(2)(b).

8 For the meaning of 'claim' see PARA 212 note 6 ante.

9 Coal Mining Subsidence Act 1991 s 29(3)(a).

- 10 Ibid s 29(3)(b). As to the circumstances in which a property is blighted see PARA 238 post.
- 11 Ibid s 29(3)(c). As to the circumstances in which action is required to be taken see PARA 238 post.
- 12 Ibid s 29(3)(d); and see PARA 238 post.

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238. Purchase of blighted dwelling-houses.

Where a dwelling-house is blighted¹ the owner² is entitled to require the responsible person³ to purchase his interest in it if:

- 136 (1) the owner has made reasonable endeavours to sell his interest in it⁴;
- 137 (2) because the dwelling-house is blighted, the owner has been unable to sell his interest in it except at a price which is substantially lower than that for which it might reasonably have been expected to be sold if it was not blighted⁵; and
- 138 (3) the principal reason for the proposed sale is a change in the owner's personal or family circumstances such as would be likely to cause any reasonable owner to decide to sell the owner's interest in the dwelling-house⁶.

Where the owner of a blighted dwelling-house is entitled to require the responsible person to purchase his interest in it, the responsible person must, on the owner making a written request to him, forthwith proceed to purchase the owner's interest in the dwelling-house at its unblighted value⁷ at the date the request was made⁸.

1 For the meaning of 'dwelling-house' see PARA 218 note 8 ante. A dwelling-house is blighted for these purposes if:

- 87 (1) it has been affected by subsidence damage and either a stop notice in respect of that damage is in force or there is a reasonable probability that such a notice will be given (Coal Mining Subsidence (Blight and Compensation for Inconvenience During Works) Regulations 1994, SI 1994/2564, reg 2(2)(a)); or
- 88 (2) there is a reasonable probability that the dwelling-house will be affected by subsidence damage within nine months and that a stop notice will be given in respect of that damage (reg 2(2)(b)).

For the meaning of 'subsidence damage' see PARA 205 ante. As to the meaning of 'stop notice' see PARA 224 note 11 ante; and for the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 et seq post.

2 For the meaning of 'owner' see PARA 209 note 5 ante.

3 As to the responsible person see PARA 206 ante. For these purposes, unless the context otherwise requires, the 'responsible person' means, in relation to a dwelling-house: (1) where it has been affected by subsidence damage, the person who, by virtue of the Coal Industry Act 1994 s 43 (see PARA 206 ante) or s 44 (see PARA 208 ante) is the responsible person in relation to that damage; (2) where there is a reasonable probability of subsidence damage as mentioned in note 1 head (2) supra, the person who would be the person referred to in head (1) supra in relation to that damage if it did occur: Coal Mining Subsidence (Blight and Compensation for Inconvenience During Works) Regulations 1994, SI 1994/2564, reg 2(1).

4 See *ibid* reg 3(1), (2)(a).

5 See *ibid* reg 3(1), (2)(b).

6 See *ibid* reg 3(1), (2)(c).

7 For these purposes, 'unblighted value' means, in relation to an interest in a dwelling-house, the price for which that interest could reasonably be expected to be sold if the dwelling-house was not affected, or there was no reasonable probability that it would be affected, by subsidence damage to which a stop notice applies or would apply: *ibid* reg 2(1).

8 Ibid reg 4.

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(f) Losses to Small Firms

239. Compensation for consequential losses to small firms.

Where at any time any property, which is used wholly or partly for the purposes of a small firm¹, and as respects which one or more notices of the possibility of subsidence damage² have been or should have been given to the owner³ or occupier⁴, is affected by subsidence damage, special provisions⁵ apply for the period beginning with that time and ending with the discharge by the responsible person of his remedial obligation⁶ with respect to the damage⁷.

For each year⁸ or part of a year which falls within that period, and in which any consequential loss⁹ resulting from the damage is suffered by the firm, the responsible person is under an obligation to make a payment to the firm of such amount as would have been payable to the firm by way of damages in respect of that loss if the damage had been attributable to the negligence of the responsible person¹⁰. In determining the amount of such a payment regard must be had to the rules of law relating to remoteness and the mitigation of losses¹¹.

The responsible person is not liable to make a compensation payment unless, as soon as reasonably practicable after the first time (1) when the firm suffers any consequential loss resulting from the damage; or (2) if later, when the firm has the required knowledge¹², the firm gives notice of the loss to the responsible person¹³. Where such a notice is given, the responsible person may, by notice given to any person who is entitled to give a damage notice¹⁴ in respect of the subsidence damage, elect to treat the notice as if it were also a damage notice given by that person in respect of that damage¹⁵. The responsible person is not liable to make a compensation payment except on a claim¹⁶ made by the firm within the period of 12 months beginning with the end of the year or part of a year to which the payment relates¹⁷.

1 Houses built by a building company for the purposes of sale are not, pending sale, property which is used wholly or partly for the purposes of the company within the meaning of this provision: see *Collins (Pontefract) Ltd v British Coal Corpn* (1996) 73 P & CR 102, Lands Tribunal; affd (1997) 76 P & CR 219, CA.

'Small firm' means any person who, at the time when the property is affected by subsidence damage (for the meaning of which see PARA 205 ante), is carrying on a business and the number of employees employed by him, added to the number of employees employed by any associated employer of his, does not exceed 20: Coal Mining Subsidence Act 1991 s 30(7), (8). The Secretary of State may by order substitute for the number of employees specified in s 30(8) (whether as originally enacted or as previously amended) such other number of employees as he thinks fit: s 30(9). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 4 ante; and as to the Secretary of State's power to make regulations or orders see PARA 204 ante. 'Employee' has the same meaning as in the Employment Rights Act 1996; and 'associated employer' is to be construed in accordance with s 231: Coal Mining Subsidence Act 1991 s 30(7) (amended by the Employment Rights Act 1996 s 240, Sch 1 para 49). As to employment generally see EMPLOYMENT.

2 I.e. notices under the Coal Mining Subsidence Act 1991 s 46 (as amended) (see PARA 253 post). For the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 et seq post.

3 For the meaning of 'owner' see PARA 209 note 5 ante.

4 I.e. under the Coal Mining Subsidence Act 1991 s 46(1) (see PARA 253 post): see s 30(1) (as amended: see note 7 infra).

- 5 See the text to notes 8-17 *infra*.
- 6 As to the meaning of 'remedial obligation' see PARA 211 note 3 *ante*.
- 7 Coal Mining Subsidence Act 1991 s 30(1) (amended by the Coal Industry Act 1994 s 67(8), Sch 11 Pt II).
- 8 For these purposes, 'year' means a calendar year: Coal Mining Subsidence Act 1991 s 30(7).
- 9 'Consequential loss' does not include: (1) any loss for which provision is made by *ibid* s 27(2) or s 27(3) (see PARA 235 *ante*); or (2) any loss resulting from subsidence damage as respects which the responsible person's remedial obligation is excluded by s 33(3) (see PARA 242 *post*): s 30(7) (amended by the Coal Industry Act 1994 Sch 11 Pt II).
- 10 Coal Mining Subsidence Act 1991 s 30(2). As to the principles of negligence generally see NEGLIGENCE.
- 11 *Ibid* s 30(2). As to the rules of remoteness and mitigation of loss see DAMAGES.
- 12 Ie the knowledge mentioned in *ibid* s 3(4) read with s 3(5) (see PARA 212 *ante*): see s 30(3).
- 13 *Ibid* s 30(3).
- 14 As to the meaning of 'damage notice' see PARA 212 note 8 *ante*.
- 15 Coal Mining Subsidence Act 1991 s 30(4).
- 16 For the meaning of 'claim' see PARA 212 note 6 *ante*.
- 17 Coal Mining Subsidence Act 1991 s 30(5). A payment carries interest at the applicable rate (if any) from the date of the claim on which the payment is made until payment but any period of delay in determining the amount of any such payment which is attributable to unreasonable conduct on the part of that firm is disregarded: s 30(6) (amended by the Coal Industry Act 1994 s 67(1), Sch 9 para 41(2)). As to the applicable rate see PARA 219 note 16 *ante*.

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(g) Moveable Property

240. Compensation for damage to moveable property.

Where damage is caused¹ to any moveable property² by the happening of subsidence damage³, the responsible person⁴ is liable to pay to any person having an interest in the property such amount by way of compensation as would have been payable to that person by way of damages if:

- 139 (1) the damage to the moveable property had been attributable to the negligence of the responsible person⁵; and
- 140 (2) liability for any consequential loss resulting from the damage were excluded⁶.

Compensation is nonetheless payable in respect of consequential loss where the claim⁷ is made by a small firm⁸ where (a) the moveable property was used wholly or partly for the purposes of the firm; and (b) the property affected by subsidence damage was property as respects which one or more notices had been or should have been given⁹ that there was a risk of land being affected by subsidence damage¹⁰. In determining the amount of such a payment as is payable regard must be had to the rules of law relating to remoteness and the mitigation of losses¹¹.

The responsible person is not liable to pay compensation to any person in respect of damage to any moveable property where (i) at the time when it was damaged, the property was on any land in circumstances such that its presence constituted a trespass to that land; or (ii) the damage was wholly attributable to the fault¹² of that person or any person in lawful possession of the property, and if the damage was partly attributable to the fault of that person or any person in lawful possession of the property, the liability of the responsible person is reduced proportionately¹³.

1 The provisions relating to compensation for damage to moveable property do not apply in any case where the injury was caused before 30 November 1991: Coal Mining Subsidence Act 1991 s 53(1), Sch 7 para 3(1)(d).

2 For these purposes, 'moveable property' means, in relation to England and Wales, any chattel personal other than a thing in action or money: *ibid* s 31(4). As to personal property generally see PERSONAL PROPERTY.

3 For the meaning of 'subsidence damage' see PARA 205 ante.

4 As to the responsible person see PARA 206 ante.

5 Coal Mining Subsidence Act 1991 s 31(1)(a). As to negligence generally see NEGLIGENCE.

6 *Ibid* s 31(1)(b).

7 For the meaning of 'claim' see PARA 212 note 6 ante.

8 For these purposes, 'small firm' has the meaning which would be given by the Coal Mining Subsidence Act 1991 s 30(7) (see PARA 239 note 1 ante) if the reference to the time when the property is affected by subsidence damage were a reference to the time when damage is caused to the moveable property: s 31(4).

9 *le* under *ibid* s 46(1) (see PARA 253 post): see s 31(2) (as amended: see note 10 infra).

10 *Ibid* s 31(2) (amended by the Coal Industry Act 1994 s 67(8), Sch 11 Pt II).

11 Coal Mining Subsidence Act 1991 s 31(2) (as amended: see note 10 supra). As to the rules of remoteness and mitigation of loss see DAMAGES.

12 For these purposes, 'fault' includes any act or omission which would, if the damage to the moveable property had been caused by the negligence of the responsible person, have constituted fault for the purposes of the Law Reform (Contributory Negligence) Act 1945: Coal Mining Subsidence Act 1991 s 31(4). As to contributory negligence see NEGLIGENCE vol 78 (2010) PARA 75 et seq.

13 Ibid s 31(3).

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(h) Death or Disablement

241. Compensation for death or disablement.

If, as the result of an injury caused by the happening of subsidence damage¹, any person dies or is disabled (whether permanently or temporarily), and no other action² to recover damages is maintainable in respect of the death or disablement, the responsible person³ is liable to pay damages⁴. The responsible person is liable, in the case of a death, to pay the like damages, recoverable in the like manner and within the like time⁵, as would have been payable if:

- 141 (1) the death had been attributable to the negligence of the responsible person⁶; and
- 142 (2) the persons by or on behalf of whom an action could have been brought against the responsible person for damages in respect of the death if it had been so attributable included any person who at the time of the death was, or but for the injury would have been, wholly or partly maintained by the deceased⁷; and
- 143 (3) the damages were claimed under the Fatal Accidents Act 1976⁸.

In a case of disablement, the responsible person is liable to pay the like damages, recoverable in the like manner and within the like time, as would have been payable if the disablement had been attributable to the negligence of the responsible person⁹. However, no liability attaches to the responsible person in respect of the death or disablement of any person as a result of an injury if at the time when that person incurred the injury he was on any land as a trespasser, or the injury was wholly attributable to the fault¹⁰ of that person¹¹.

1 For the meaning of 'subsidence damage' see PARA 205 ante.

2 Ie apart from under the Coal Mining Subsidence Act 1991 s 32: see s 32(1). It would therefore seem that this provision does not prevent another claim being brought under s 32 in the alternative.

3 As to the responsible person see PARA 206 ante.

4 See the Coal Mining Subsidence Act 1991 s 32(1). The provisions relating to compensation for death or disablement do not apply in any case where the injury was caused before 30 November 1991 (s 53(1), Sch 7 para 3(1)(d)), and nothing in the Act affects the operation of the Coal-Mining (Subsidence) Act 1957 s 12 (repealed) in relation to any case where the injury was caused before that date (Coal Mining Subsidence Act 1991 Sch 7 para 3(2)(b)).

5 It seems clear that the effect of the wording of this provision is that proceedings are to be brought before the ordinary courts by way of derogation from the provisions of *ibid* s 40 (see PARA 251 post) and the Coal Industry Act 1994 s 47 (see PARAS 251-252 post), under which disputes as to subsidence matters fall in general to be referred to and determined by the Lands Tribunal or under arbitration. Accordingly, proceedings under the Coal Mining Subsidence Act 1991 s 32 must be brought in the County Court (or the High Court if the value of the claim is £50,000 or more): see the High Court and County Court Jurisdiction Order 1991, SI 1991/724, art 5 (amended by SI 1999/1014).

6 Coal Mining Subsidence Act 1991 s 32(2)(a). As to negligence generally see NEGLIGENCE.

7 *Ibid* s 32(2)(b).

8 *Ibid* s 32(2)(c).

9 Ibid s 32(3).

10 For these purposes, 'fault' includes any act or omission which would, if the death or disablement had been caused by the negligence of the responsible person, have constituted fault for the purposes of the Law Reform (Contributory Negligence) Act 1945: Coal Mining Subsidence Act 1991 s 32(5). As to contributory negligence see NEGLIGENCE vol 78 (2010) PARA 75 et seq.

11 Ibid s 32(4). If the injury was partly attributable to the fault of that person the liability of the responsible person is reduced proportionately: s 32(4).

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(D) PREVENTIVE AND OTHER MEASURES

(a) Existing Buildings, Structures or Works

UPDATE

241 Compensation for death or disablement

NOTE 5--SI 1991/724 art 5 further amended: SI 2009/577.

242. Existing buildings, structures or works.

Where it appears (1) that subsidence damage¹ is likely to occur to any building, structure² or works³ for the time being on, in or over any land; and (2) that the execution of preventive works on that property (or on that property and some other property which would benefit from those preventive works) would prevent the occurrence or reduce the extent of such damage⁴, the responsible person⁵ may:

- 144 (a) with the consent of all persons who are owners⁶ of any property⁷ on which the preventive works would fall to be executed, or who would be liable to make good in whole or in part subsidence damage to any of that property, execute the preventive works⁸; or
- 145 (b) on undertaking to pay any cost reasonably incurred in the execution of the preventive works, request their execution by the owner of the property on which they would fall to be executed or any other person who would be liable as mentioned in head (a) above in respect of that property⁹.

If any person unreasonably withholds his consent to the execution of preventive works by the responsible person, or unreasonably fails to comply with any request to execute such works made by the responsible person¹⁰, and subsidence damage subsequently occurs to the property, then:

- 146 (i) if the damage could have been prevented by the execution of the preventive works, the responsible person is not required to take any remedial action¹¹ in respect of that damage¹²;
- 147 (ii) if the extent of the damage could have been reduced by the execution of the preventive works, the responsible person is not required to take any remedial action which would not have been required if the preventive works had been executed¹³; and
- 148 (iii) if the property is a dwelling-house¹⁴, the person concerned is not entitled, in respect of the damage, to give a notice¹⁵ for relief for temporary dispossession or to receive relief¹⁶ for temporary dispossession¹⁷.

1 For the meaning of 'subsidence damage' see PARA 205 ante.

- 2 For the meaning of 'structure' see PARA 205 note 3 ante.
- 3 As to the meaning of 'works' see PARA 205 note 3 ante.
- 4 Coal Mining Subsidence Act 1991 s 33(1) (amended by the Coal Industry Act 1994 ss 43(8), 67(8), Sch 6 para 3(1), Sch 11 Pt II). For relevant transitional provisions see the Coal Mining Subsidence Act 1991 s 53(1), Sch 7 para 4.
- 5 As to the responsible person see PARA 206 ante.
- 6 For the meaning of 'owner' see PARA 209 note 5 ante.
- 7 Where any such property is ecclesiastical property (for the meaning of which see PARA 228 note 4 ante) the Church Commissioners are included among the persons whose consent is required: Coal Mining Subsidence Act 1991 s 33(7). As to the Church Commissioners see ECCLESIASTICAL LAW. Where different consents are required in respect of different parts of any property, those different parts are to be treated as different properties: s 33(4).
- 8 Ibid s 33(2)(a).
- 9 Ibid s 33(2)(b).
- 10 The withholding by any person of consent to the execution of preventive works on any property by the responsible person, and the failure to comply with any request to execute such works made by the responsible person, are not to be regarded as unreasonable in a case to which *ibid* s 9 (see PARA 217 ante) applies: s 33(6).
- 11 As to remedial action see PARA 211 ante.
- 12 Coal Mining Subsidence Act 1991 s 33(3)(a). Heads (i)-(ii) in the text do not apply in the case of a failure to comply with a request to execute preventive works if the failure is the result of an express refusal to comply or permit compliance by one or more, but not both or all, of two or more persons whose compliance or permission is necessary: s 33(5).
- 13 Ibid s 33(3)(b); and see note 12 *supra*.
- 14 For the meaning of 'dwelling-house' see PARA 218 note 8 ante.
- 15 *Ie* a notice under the Coal Mining Subsidence Act 1991 s 23(1), Sch 5 para 4 (see PARA 231 ante): see s 33(3)(c). For the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 *et seq post*.
- 16 *Ie* under *ibid* Sch 5: see s 33(3)(c).
- 17 Ibid s 33(3)(c).

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(b) Land Drainage Systems

UPDATE

242 Existing buildings, structures or works

NOTE 7--Coal Mining Subsidence Act 1991 s 33(7) amended: Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 29(2).

243. Remedial measures to be taken.

In any area in England and Wales outside the Doncaster Drainage Area¹, the responsible person² must from time to time carry out to the reasonable satisfaction of the appropriate drainage authority³, and in accordance with such arrangements as to timing as may be agreed or determined⁴, such measures for remedying, mitigating or preventing any deterioration in a land drainage system⁵, by reason of subsidence damage⁶ which has occurred or appears likely to occur, as may be reasonably required by the appropriate drainage authority⁷.

The responsible person may elect not to carry out such measures himself, but to make a payment to the appropriate drainage authority equal to the cost reasonably incurred by the authority in carrying out the measures, or if the authority proposes to merge the carrying out of the measures with the execution of other works, the responsible person may make payments equal to any sums from time to time shown to have been expended by the authority in carrying out the merged operations up to the appropriate amount⁸. Where it is agreed or determined to be appropriate, the responsible person's liability for the cost of any recurring measures may be discharged by a lump sum payment agreed or determined to represent the capital amount of that cost⁹.

Provisions relating to stop notices¹⁰ apply where a damage notice¹¹ has been given to the responsible person in respect of any property, and he is of the opinion with respect to all or any of the permanent works which would otherwise fall to be executed in connection with the property that the necessity for those works or the nature or manner of their execution is likely to be so affected by operations¹² as to make it unreasonable that those works should be executed for the time being¹³.

The responsible person has the same powers of surveying and entering on any land, and of doing anything there, as are conferred on the appropriate drainage authority by the enactments relating to land drainage¹⁴.

Regulations¹⁵ may make provision with respect to the procedure to be followed by the responsible person and by the appropriate drainage authority in giving effect to these land drainage measures¹⁶, and for the determination of questions arising between the responsible person and the authority¹⁷.

¹ For these purposes, 'the Doncaster Drainage Area' has the same meaning as in the Doncaster Area Drainage Act 1929 (see PARA 246 post): Coal Mining Subsidence Act 1991 s 36(8). For relevant transitional provisions see s 53(1), Sch 7 para 6. As to land drainage generally see WATER AND WATERWAYS vol 101 (2009) PARA 573 et seq. As to the Doncaster Drainage District see PARA 246 post.

2 As to the responsible person see PARA 206 ante.

3 For these purposes, 'the appropriate drainage authority' means: (1) in a case where the measures would fall to be carried out either in connection with a main river, or outside any internal drainage district, the Environment Agency; and (2) in any other case, the internal drainage board in whose district the measures would fall to be carried out: Coal Mining Subsidence Act 1991 s 36(8) (amended by virtue of the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1). As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; WATER AND WATERWAYS vol 101 (2009) PARA 574. 'Main river' means a main river for the purposes of the Water Resources Act 1991 Pt IV (ss 105-113) (as amended) (see WATER AND WATERWAYS vol 101 (2009) PARA 574): Coal Mining Subsidence Act 1991 s 36(8) (amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2, Sch 1 para 59).

4 For these purposes, 'agreed or determined' means agreed between the responsible person and the appropriate drainage authority or, in default of such agreement, determined in the manner provided by regulations: Coal Mining Subsidence Act 1991 s 36(8).

5 For these purposes, 'land drainage system' means a drainage system maintainable by a drainage authority: *ibid* s 36(8).

6 For the meaning of 'subsidence damage' see PARA 205 ante.

7 Coal Mining Subsidence Act 1991 s 36(1).

8 *Ibid* s 36(2). For these purposes, 'the appropriate amount' means such aggregate amount as may be agreed or determined to be reasonable in all the circumstances, having regard to the expenditure which would have been incurred by the responsible person or by the authority in carrying out the measures: s 36(2). The responsible person in a case where the measures fall to be carried out in connection with property comprised in a main river, must make the appropriate election, and in any other case, must not unreasonably refuse any request to make that election received from the appropriate drainage authority: s 36(3). However, the responsible person is not deemed to act unreasonably in refusing any such request received after he has begun to carry out the measures: s 36(3) proviso.

9 *Ibid* s 36(4).

10 See *ibid* s 16(1)-(5) (s 16(1) as amended); and PARA 224 ante. As to the meaning of 'stop notice' see PARA 224 note 11 ante. For the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 et seq post.

11 For the meaning of 'damage notice' see PARA 212 note 8 ante.

12 *Ie* under the Coal Mining Subsidence Act 1991 s 36 (as amended) or under the Doncaster Area Drainage Act 1929 Pt II (ss 9-12): see the Coal Mining Subsidence Act 1991 s 36(5).

13 *Ibid* s 36(5). In its application to any stop notice so given, s 17(1) (as amended) (see PARA 225 ante) has effect as if it referred to the responsible person no longer being of the opinion that the necessity for the works or the nature or manner of their execution is likely to be so affected by operations as to make it unreasonable that those works should be executed for the time being: s 36(5).

14 *Ibid* s 36(6). However, this does not apply in relation to any land occupied by or on behalf of the Crown: s 36(6) proviso.

15 As to the regulations made see the Coal Mining Subsidence (Land Drainage) Regulations 1994, SI 1994/3064; and PARAS 244-245 post. As to the power to make regulations or orders see PARA 204 ante.

16 Coal Mining Subsidence Act 1991 s 36(7)(a).

17 *Ibid* s 36(7)(b).

UPDATE

243-244 Remedial measures to be taken, Determination of questions relating to land drainage

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

243 Remedial measures to be taken

NOTES--Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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244. Determination of questions relating to land drainage.

In default of agreement, any land drainage question¹ arising between the responsible person² and the appropriate drainage authority³ is to be referred to and determined by an arbitrator agreed for that purpose or, in default of such agreement, appointed by the President of the Institute of Civil Engineers⁴.

Where either the appropriate drainage authority or the responsible person so requests⁵, any question as to the reasonableness of any requirement to carry out remedial measures⁶, or the timing of those measures, must be referred to and determined by the Secretary of State⁷. Before the determination is made⁸, every party must be allowed a reasonable opportunity to make representations⁹. Where, after the determination, the Secretary of State is satisfied on an application¹⁰ made by any party to that determination that fresh evidence has become available which: (1) could not reasonably have been discovered before such determination; and (2) renders it desirable for that determination to be reconsidered, he must, after giving notice in writing to every party and allowing every such party a reasonable opportunity to make representations, make a further determination¹¹.

1 le under the Coal Mining Subsidence Act 1991 s 36 (as amended): see PARA 243 ante.

2 For these purposes, 'the responsible person' means: (1) in relation to subsidence damage that has occurred, the person who, by virtue of the Coal Industry Act 1994 s 43 (see PARA 206 ante) and s 44 (see PARA 208 ante), is the responsible person in relation to that damage; and (2) in relation to such subsidence damage as appears likely to occur, the person who would be the person referred to in head (1) supra in relation to that damage if it did occur: Coal Mining Subsidence (Land Drainage) Regulations 1994, SI 1994/3064, reg 1(2). For the meaning of 'subsidence damage' see PARA 205 ante.

3 For the meaning of 'appropriate drainage authority' see PARA 243 note 3 ante.

4 See the Coal Mining Subsidence (Land Drainage) Regulations 1994, SI 1994/3064, regs 2, 4(1). As to arbitration generally see ARBITRATION vol 2 (2008) PARA 1201 et seq.

5 The person making such a request must:

- 89 (1) make the request in writing (ibid reg 3(2)(i));
- 90 (2) specify in the request the questions to be determined (reg 3(2)(ii));
- 91 (3) supply copies of the request to every other party to the determination (reg 3(2)(iii)); and
- 92 (4) comply with such other requirements (whether general or specific in nature) as to the form and manner in which the questions may be submitted, and the period within which they may be submitted, as the Secretary of State may specify by notice (reg 3(2)(iv)).

As to the Secretary of State see PARA 4 ante. The Coal Mining Subsidence (Land Drainage) Regulations 1994, SI 1994/3064, reg 3 refers to the possibility of the Secretary of State and the Minister of Agriculture, Fisheries and Food acting jointly, but the Ministry of Agriculture, Fisheries and Food has been dissolved and the minister's functions have been transferred to the Secretary of State for Environment, Food and Rural Affairs (see the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794; and PARA 4 ante).

6 See the Coal Mining Subsidence Act 1991 s 36(1), (2); and PARA 243 ante.

7 Coal Mining Subsidence (Land Drainage) Regulations 1994, SI 1994/3064, reg 3(1).

8 le under ibid reg 3(1): see reg 3(3). A determination is final: see reg 3(4).

9 Ibid reg 3(3).

10 A party making such an application must:

93 (1) make the application in writing (ibid reg 3(6)(i));

94 (2) specify particulars of the fresh evidence (reg 3(6)(ii)); and

95 (3) supply copies of the application to every other party to the determination (reg 3(6)(iii)).

11 Ibid reg 3(5).

243-244 Remedial measures to be taken, Determination of questions relating to land drainage

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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245. Election by the responsible person.

After being informed by the appropriate drainage authority¹ of the remedial measures² that the responsible person³ is required to carry out, the responsible person must, as soon as reasonably practicable in the circumstances, give notice in writing to that authority stating that he has elected either to carry out such measures himself or to make a payment⁴ to the authority⁵. However, where the responsible person and the appropriate drainage authority have not agreed upon the remedial measures, or any question regarding (1) the form which such measures are to take; (2) the timing of such measures; or (3) the reasonableness of such measures, has been referred to arbitration or the Secretary of State⁶, the requirement to give notice⁷ does not apply until agreement has been reached or the question determined⁸. An election to carry out remedial measures or to make a payment is binding on the responsible person, unless the appropriate drainage authority agrees otherwise⁹. Where the responsible person has made an election to make a payment, the appropriate drainage authority must:

- 149 (a) give notice in writing to him specifying particulars of the remedial measures which it intends to carry out or, where it is its intention to merge the carrying out of the measures with the execution of other works¹⁰, particulars of such works, not less than 28 days before the measures or the works are begun¹¹; and
- 150 (b) so far as it is within the authority's power to do so, afford the responsible person reasonable facilities for inspecting the area in which the measures or the works are to be carried out¹².

1 For the meaning of 'appropriate drainage authority' see PARA 243 note 3 ante.

2 In accordance with the Coal Mining Subsidence Act 1991 s 36(1) (see PARA 243 ante): see the Coal Mining Subsidence (Land Drainage) Regulations 1994, SI 1994/3064, reg 5(1).

3 As to the responsible person see PARAS 206, 208, 244 note 2 ante.

4 In pursuance of the Coal Mining Subsidence Act 1991 s 36(2) (see PARA 243 ante): see the Coal Mining Subsidence (Land Drainage) Regulations 1994, SI 1994/3064, reg 5(1).

5 Ibid reg 5(1). Where, after remedial measures have been agreed or determined, those measures are varied, every such variation is deemed to revoke any notice under reg 5(1), and the responsible person must give a further notice under reg 5(1): see reg 6(1). However, this provision does not relieve the responsible person from liability to make any payment to the appropriate drainage authority in respect of such measures as have been carried out by that authority before any such variation: reg 6(2).

6 As to the Secretary of State see PARA 4 ante. The Coal Mining Subsidence (Land Drainage) Regulations 1994, SI 1994/3064, refer to the possibility of the Secretary of State and the Minister of Agriculture, Fisheries and Food acting jointly, but the Ministry of Agriculture, Fisheries and Food has been dissolved and the minister's functions have been transferred to the Secretary of State for Environment, Food and Rural Affairs (see the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794; and PARA 4 ante).

7 In accordance with the Coal Mining Subsidence (Land Drainage) Regulations 1994, SI 1994/3064, reg 5(1): see reg 5(2).

8 Ibid reg 5(2).

9 Ibid reg 5(3).

10 le in accordance with the Coal Mining Subsidence Act 1991 s 36(2) (see PARA 243 ante): see the Coal Mining Subsidence (Land Drainage) Regulations 1994, SI 1994/3064, reg 5(4)(i).

11 Ibid reg 5(4)(i).

12 Ibid reg 5(4)(ii).

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246. The Doncaster Drainage District.

The Doncaster Area Drainage Acts 1929 and 1933 imposed obligations on mine owners¹ to establish and maintain funds for the maintenance of drainage works constructed under the Acts, and to undertake certain works and liabilities consequent on the subsidence of land in the neighbourhood of the River Don by mining operations. In 1947 an Order in Council² was made discharging any right conferred or obligation imposed by these Acts on mine owners working or proposing to work minerals under land situated within the Doncaster Drainage District³ or on the Catchment Board of the River Ouse (Yorks) Catchment Area⁴ or the Catchment Board of the River Trent Catchment Area⁵ in respect of any mine which by virtue of the Coal Industry Nationalisation Act 1946 vested in the National Coal Board⁶ (later renamed the British Coal Corporation)⁷.

Certain obligations imposed by the Doncaster Area Drainage Act 1929⁸ do not apply to such coal mines⁹ in respect of which interests have vested¹⁰ in the Coal Authority¹¹. However, where such a mine has at the date of vesting permanently ceased to be worked or at any time thereafter permanently ceases to be worked, the Coal Authority must maintain in proper condition any drainage works at any time constructed under the Doncaster Area Drainage Act 1929¹² in respect of that mine¹³. The Coal Authority may¹⁴ require any of such drainage works to be transferred to the Environment Agency on such terms and conditions as may be agreed between the Coal Authority and the Environment Agency¹⁵. If any dispute arises between the Coal Authority and the Environment Agency as to whether or not any mine has permanently ceased to be worked, or the terms and conditions subject to which any such drainage works are to vest in the Environment Agency, the matter is to be determined by arbitration¹⁶. The transferred drainage works vest in and become the property of the Environment Agency on the expiry of six months from the date when agreement as to the terms and conditions was reached or, in the event of a dispute which is referred to arbitration, from the date of the award of the arbitrator¹⁷. On vesting, the obligation of the Coal Authority to maintain those works ceases¹⁸.

1 'Mine owner' means the owner, lessee or other persons entitled to work and get minerals; and 'minerals' means all minerals and substances in or under land, obtainable whether by underground or by surface working: Doncaster Area Drainage Act 1929 s 33.

2 The Coal Industry Nationalisation (Doncaster Drainage) Order 1947, SR & O 1947/651.

3 See the Doncaster Area Drainage Act 1929 s 1 (as amended).

4 The catchment board was dissolved by the Yorkshire Ouse River Board Constitution Order 1950, SI 1950/64. The functions and responsibilities of catchment boards are now vested in the Environment Agency: see WATER AND WATERWAYS vol 101 (2009) PARA 573. As to land drainage generally see WATER AND WATERWAYS vol 101 (2009) PARA 573 et seq. As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; WATER AND WATERWAYS vol 100 (2009) PARA 17.

5 The catchment board was dissolved by the Trent River Board Constitution Order 1950, SI 1950/2041. See also note 4 supra.

6 See the Coal Industry Nationalisation Act 1946 s 45(1), (3)-(5) (repealed); and the Coal Industry Nationalisation (Doncaster Drainage) Order 1947, SR & O 1947/651, art 2(1). The order contained also supplemental provisions consequent on the nationalisation of the coal-mining industry: see arts 2(2)-(6), 3-6. As to the nationalisation of the coal-mining industry see PARA 2 ante.

7 See PARA 2 ante.

8 Ie the obligations on mine owners to establish funds for maintenance of works imposed by the Doncaster Area Drainage Act 1929 s 10 (as amended).

9 As to the meaning of 'coal mine' see PARA 5 note 15 ante.

10 Ie by virtue of the Coal Industry Act 1994 s 7(3): see PARA 67 ante.

11 Doncaster Area Drainage Act 1929 s 10(6) (amended by the Doncaster Drainage Act 1929 (Amendment) Order 1994, SI 1994/3062, art 2(b)).

12 Ie under the Doncaster Area Drainage Act 1929 s 9 (as amended).

13 Ibid s 10A(1) (s 10A added by the Doncaster Drainage Act 1929 (Amendment) Order 1994, SI 1994/3062, art 3).

14 Ie by notice served on the Environment Agency: see the Doncaster Area Drainage Act 1929 s 10A(2) (as added: see note 13 supra); and the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1.

15 Doncaster Area Drainage Act 1929 s 10A(2) (as added: see note 13 supra).

16 Ibid s 10A(3), (4) (as added: see note 13 supra). As to arbitration generally see ARBITRATION vol 2 (2008) PARA 1201 et seq.

17 Ibid s 10A(5) (as added: see note 13 supra).

18 Ibid s 10A(5) (as added: see note 13 supra).

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(E) SUPPLEMENTARY PROVISIONS

(a) *Claims*

UPDATE

246 The Doncaster Drainage District

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

247. Avoidance of double claims.

A person entitled to give a damage notice¹ in respect of subsidence damage² to any property is not entitled to proceed at the same time in respect of the same damage to that property with both (1) such a notice; and (2) a claim³ against the person with responsibility for subsidence affecting any land⁴ for damages or compensation arising apart from the Coal Mining Subsidence Act 1991, although he may elect which notice or claim he will proceed with for the time being⁵. Where any person proceeds with one such original notice or claim he is not entitled to proceed with the other unless it is determined, whether by agreement or otherwise, that he is entitled to none of the relief claimed by the original notice or claim, or that notice or claim is withdrawn before it is determined⁶.

1 As to the meaning of 'damage notice' see PARA 212 note 8 ante. For the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 et seq post.

2 For the meaning of 'subsidence damage' see PARA 205 ante.

3 For the meaning of 'claim' see PARA 212 note 6 ante.

4 See the Coal Industry Act 1994 s 43(8), Sch 6 para 7. As to the responsible person see PARA 206 ante.

5 Coal Mining Subsidence Act 1991 s 37(1).

6 Ibid s 37(2). Where two or more persons are entitled to give a damage notice under Pt II (ss 2-21) (as amended) in respect of the same subsidence damage to any property, s 37(1), (2) applies as if any election made by any one of them to proceed with such a notice had also been made by the other or others of them: s 37(3).

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248. Agreements as to the working of minerals or the leaving of minerals unworked.

The provisions of the Coal Mining Subsidence Act 1991 and of any other enactment¹ making provision with respect to rights and liabilities between the person with responsibility for subsidence affecting any land² and any government department, local authority or statutory undertakers³ in respect of the working of minerals⁴ under or adjacent to any property, or the leaving of minerals unworked for the support of any property⁵, have effect subject to the terms of any agreement with respect to such rights and liabilities which has been entered into between the responsible person and the department, authority or undertakers otherwise than in connection with a disposition of an interest in land and is for the time being subsisting⁶.

1 See PARA 191 note 5 ante.

2 See the Coal Industry Act 1994 s 43(8), Sch 6 para 7. As to the responsible person see PARA 206 ante.

3 For the meaning of 'statutory undertakers' see PARA 217 note 8 ante.

4 For the meaning of 'minerals' see PARA 12 ante.

5 As to the right of support see PARA 116 et seq ante.

6 Coal Mining Subsidence Act 1991 s 37(4). Without prejudice to s 37(4), the provisions of the Coal Mining Subsidence Act 1991 and the Coal Industry Act 1994 relating to any person who is the responsible person in relation to any subsidence damage, or who would be the responsible person if any such damage occurred, do not affect any rights or obligations in connection with that damage that arise (1) under a restructuring scheme; (2) under the conditions of any licence under Pt II (ss 25-36) (as amended); or (3) apart from the Coal Industry Act 1994, as between different persons who are or have been at any time licensed operators, or as between the Coal Authority and any one or more such persons: s 67(7), Sch 10 para 13(2). As to restructuring schemes see PARA 73 ante. As to the Coal Authority see PARA 52 et seq ante.

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249. Reimbursement of a successful claimant's expenses.

Where the person with responsibility for subsidence affecting any land¹ takes any remedial action², or makes any payment to, or makes any living accommodation available to, any person³, he must also pay any costs or expenses reasonably incurred by the claimant⁴ or any other person interested⁵ or by the person in question (1) for the preparation and prosecution of his damage notice⁶ or claim⁷; or (2) in the case of costs or expenses incurred by the claimant before the subsidence damage⁸ became evident, with a view to the possible preparation and prosecution of his damage notice⁹. These provisions, however, do not apply to:

- 151 (a) costs and expenses incurred by the claimant or any other person interested
 - (i) in securing or attempting to secure the agreement or consent of any other person to the exercise by the person with responsibility for subsidence affecting any land of certain powers¹⁰ under the Coal Mining Subsidence Act 1991¹¹; or (ii) in pursuing an application¹² to the county court regarding the unreasonable withholding of consent¹³;
- 152 (b) costs or expenses incurred by the claimant or any other person interested more than four years¹⁴ before the giving of his damage notice¹⁵;
- 153 (c) costs or expenses incurred in or in connection with any proceedings before any tribunal, court or other person if an order for their payment has been or could have been made by that tribunal, court or other person¹⁶.

1 See the Coal Industry Act 1994 s 43(8), Sch 6 para 7. As to the responsible person see PARA 206 ante.

2 As to remedial action see PARA 211 ante.

3 Ie under the Coal Mining Subsidence Act 1991 Pt III (ss 22-36) (as amended): see s 38(1).

4 For the meaning of 'claimant' see PARA 212 note 9 ante.

5 For the meaning of 'any other person interested' see PARA 212 note 10 ante.

6 As to the meaning of 'damage notice' see PARA 212 note 8 ante. For the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 et seq post.

7 For the meaning of 'claim' see PARA 212 note 6 ante.

8 For the meaning of 'subsidence damage' see PARA 205 ante.

9 Coal Mining Subsidence Act 1991 s 38(1), (2).

10 Ie those mentioned in ibid s 41(1)(a) (see PARA 251 post): see s 38(3)(a).

11 Ibid s 38(3)(a).

12 Ie under ibid s 41(2) (see PARA 251 post): see s 38(3)(b).

13 Ibid s 38(3)(b).

14 The Secretary of State may by order substitute for this period (whether as originally enacted or as previously amended) such other period as he thinks fit, or direct that ibid s 38(4) is not to apply in such circumstances as may be specified in the order: s 38(6). At the date at which this volume states the law no such

order had been made. As to the Secretary of State see PARA 4 ante; and as to the Secretary of State's power to make regulations or orders see PARA 204 ante.

15 Ibid s 38(4).

16 Ibid s 38(5).

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250. Claim for compensation in relation to statutory rights to withdraw support.

In any case where (1) immediately before 1 September 1975¹ the National Coal Board² had a right³ to withdraw support from any land⁴; and (2) after that date that land has been damaged by the working of coal⁵ in the exercise of the right to withdraw support conferred by the Coal Industry Act 1975⁶ or the Coal Industry Act 1994⁷, any person interested in that land may claim compensation for that damage in accordance with the terms and conditions which were applicable before that date⁸. No person is entitled both to receive compensation for damage under these provisions and to receive compensation for that damage, or have that damage made good under Part II⁹ of the Coal Mining Subsidence Act 1991¹⁰.

1 Ie the commencement of the Coal Industry Act 1975: see s 8. As to the historical background to the coal-mining subsidence legislation see PARA 202 ante.

2 The National Coal Board later became known as the British Coal Corporation: see PARA 2 ante. As to the British Coal Corporation see PARAS 2-3 ante.

3 Ie by virtue of the Coal Act 1938 s 4, Sch 2 para 5 (repealed) which related to cases where the surface and the mine were separately held on 1 January 1939.

4 As to the statutory right to withdraw support from land in relation to coal mining see PARA 178 et seq ante.

5 For the meaning of 'coal' see PARA 1 note 7 ante (definition applied by the Coal Mining Subsidence Act 1991 s 52(1)).

6 Ie by the Coal Industry Act 1975 s 2 (repealed).

7 Ie by the Coal Industry Act 1994 s 38 (see PARA 178 ante).

8 Coal Mining Subsidence Act 1991 s 53(1), Sch 7 para 2(1). See also PARA 184 et seq ante.

9 Ie *ibid* Pt II (ss 2-21) (as amended): see PARA 211 et seq ante.

10 Ibid Sch 7 para 2(2).

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(b) Disputes and Complaints

251. Reference of disputes.

In general¹, and subject to provisions as to arbitration², any question arising under the Coal Mining Subsidence Act 1991 falls, in default of agreement, to be referred to and determined by the Lands Tribunal³. Such questions may include:

- 154 (1) any question as to who is the person with responsibility⁴ for subsidence affecting particular land⁵;
- 155 (2) the question whether there has been a contravention of any subsidence requirement⁶; and
- 156 (3) the question how any such contravention is to be remedied⁷.

The tribunal, court, or other person by whom any question is to be heard or determined under the Coal Mining Subsidence Act 1991 may make such orders as may be necessary to give effect to its or his determination, and in particular may by order require any person with responsibility for subsidence affecting any land⁸ to carry out any obligations imposed upon him by that Act within such period as the tribunal, court or person may direct⁹, and award damages in respect of any failure of the person with responsibility for subsidence affecting any land¹⁰ to carry out any such obligations¹¹. When a question¹² is referred to the Lands Tribunal or to arbitration¹³, the powers of the tribunal or arbitrator include¹⁴:

- 157 (a) power to have such regard as may appear appropriate to any recommendations or report¹⁵ of the subsidence adviser¹⁶;
- 158 (b) power by order to require a person with responsibility for subsidence affecting land to take such steps for remedying any contravention of a subsidence requirement as that tribunal or arbitrator may direct¹⁷; and
- 159 (c) power to award such compensation not exceeding £5,000¹⁸ in respect of any inconvenience caused to a person by a contravention of a subsidence requirement which does not otherwise¹⁹ fall to be compensated for²⁰.

No question as to whether any person with responsibility for subsidence affecting any land²¹ is in breach of his remedial obligation²² in respect of any subsidence damage²³ may be heard and determined by any tribunal, court or other person unless the necessary reference is made or the necessary proceedings are instituted, before the end of: (i) the period of three years beginning with the earliest date on which the responsible person is in breach of his remedial obligation; or (ii) the period of six years beginning with the first date on which any person entitled to give a damage notice had the knowledge required for funding a claim in respect of that damage²⁴, whichever period expires last²⁵.

Where the agreement or consent of two or more persons is required for the person with responsibility for subsidence affecting any land²⁶ to exercise certain powers under the Coal Mining Subsidence Act 1991²⁷ and that responsible person has reached agreement with or obtained the consent of one or more, but not both or all of those persons²⁸, and if on an application made by them or by the responsible person it appears to a county court that any

person whose agreement or consent is required has withheld his agreement or consent unreasonably, the court may order that the power in question is to apply as if the responsible person had reached agreement with or obtained the consent of that person²⁹.

If the occupier of any premises refuses to afford the person with responsibility for subsidence affecting any land³⁰ such facilities as he may require to enter upon, inspect and execute works, then a magistrates court, on a complaint³¹ made by the responsible person, may confer such powers to enter, inspect and execute works on the premises as may appear to the court to be necessary, and the court may order the occupier to permit the exercise of these powers³².

1 Ie except as provided otherwise by or under the Coal Mining Subsidence Act 1991 (eg under s 32: see PARA 241 ante): see s 40(1).

2 See PARA 252 post.

3 Coal Mining Subsidence Act 1991 s 40(1). As to procedure see the Lands Tribunal Rules 1996, SI 1996/1022 (as amended). As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

4 As to the responsible person see PARA 206 ante.

5 Coal Industry Act 1994 s 47(1)(a).

6 Ibid s 47(1)(b). References to a contravention of a subsidence requirement mean a contravention by the responsible person of:

96 (1) any requirements imposed on him by or under the Coal Mining Subsidence Act 1991 or by any regulations under the Coal Industry Act 1994 s 45 (see PARA 209 ante) (s 47(9)(a));

97 (2) the requirement under s 43(6) (see PARA 206 ante) (s 47(9)(b));

98 (3) the requirement under s 43(8), Sch 6 para 1 to forward a damage notice to the Coal Authority as soon as practicable after receiving it (s 47(9)(c));

99 (4) the requirement to comply with an order under s 47(4)(b) or the Coal Mining Subsidence Act 1991 s 40(3)(a) (Coal Industry Act 1994 s 47(9)(d)).

As to the meaning of 'damage notice' see PARA 212 note 8 ante. For the meaning of 'notice' see PARA 212 note 5 ante. As to notices see PARA 253 et seq post. As to the Coal Authority see PARA 52 et seq ante.

7 Ibid s 47(1)(c).

8 Ibid s 43(8), Sch 6 para 7.

9 Coal Mining Subsidence Act 1991 s 40(3)(a).

10 Coal Industry Act 1994 Sch 6 para 7.

11 Coal Mining Subsidence Act 1991 s 40(3)(b). As to the power of the Lands Tribunal to award interest on a sum awarded as compensation for subsidence damage see *Knibb v National Coal Board* [1987] QB 906, [1986] 3 All ER 644, CA; *British Coal Corp v Gwent County Council* (1995) 71 P & CR 482, CA.

12 Ie a question falling within the Coal Industry Act 1994 s 47(1): see s 47(4).

13 See PARA 252 post.

14 Ie in addition to the incidental power conferred by the Coal Industry Act 1994 s 47(3) and the Coal Mining Subsidence Act 1991 s 40(3): see the Coal Industry Act 1994 s 47(4).

15 Ie made by virtue of regulations made under ibid s 46: see s 47(4)(a).

16 Ibid s 47(4)(a). As to the subsidence adviser see PARA 210 ante.

17 Ibid s 47(4)(b).

18 Or such higher amount as may be substituted by an order made by the Secretary of State: *ibid* s 47(6). At the date at which this volume states the law no such order had been made. The Coal Mining Subsidence Act 1991 s 50 (see *PARA 204 ante*) applies to the power to make orders under this provision as it applies to any power to make regulations or orders under that Act: see the Coal Industry Act 1994 s 47(10), (11). As to the Secretary of State see *PARA 4 ante*.

19 *Ie* apart from *ibid* s 47(4)(c).

20 *Ibid* s 47(4)(c).

21 *Ibid* Sch 6 para 7.

22 As to the meaning of 'remedial obligation' see *PARA 211 note 3 ante*.

23 For the meaning of 'subsidence damage' see *PARA 205 ante*.

24 See the Coal Mining Subsidence Act 1991 s 3; and *PARA 212 ante*.

25 *Ibid* s 44(1), (2). Any period during which the responsible person's obligation is subject to the terms of a stop notice (as to the meaning of which see *PARA 224 note 11 ante*) is to be disregarded: s 44(3).

26 Coal Industry Act 1994 Sch 6 para 7.

27 *Ie* the powers conferred under the Coal Mining Subsidence Act 1991 s 5(3), (5) (see *PARA 213 ante*), s 10(2)(b) (see *PARA 221 ante*), or s 33(2)(a) (see *PARA 242 ante*): s 41(1)(a).

28 *Ibid* s 41(1)(b).

29 *Ibid* s 41(2). The provisions of the Coal Mining Subsidence Act 1991 s 38(2) relating to the reimbursement of a claimant's expenses (see *PARA 250 ante*) do not apply to costs or expenses relating to securing or attempting to secure consent as mentioned in s 41(1)(a) (see the text to *note 27 supra*) or in pursuing an application under s 41(2): see s 38(3).

30 Coal Industry Act 1994 Sch 6 para 7.

31 As to magistrates' courts generally and the procedure by way of complaint see *MAGISTRATES*.

32 Coal Mining Subsidence Act 1991 s 42(1). However, this provision does not extend to premises occupied by or on behalf of the Crown: s 42(2).

UPDATE

251 Reference of disputes

TEXT AND NOTES--The Lands Tribunal has been abolished and its functions have been transferred to the Upper Tribunal: Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009, SI 2009/1307, art 2 (see *COMPULSORY ACQUISITION* vol 18 (2009) *PARA 720 et seq*). Coal Mining Subsidence Act 1991 s 40(1); Coal Industry Act 1994 s 47 amended: SI 2009/1307.

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252. Arbitration.

The Secretary of State¹ may make provision by regulations² as he considers appropriate:

- 160 (1) for establishing procedures to facilitate the making³ of references to arbitration⁴ of questions arising under the Coal Mining Subsidence Act 1991 or under the Coal Industry Act 1994⁵ relating to subsidence matters⁶;
- 161 (2) for enabling such questions to be referred to and determined by arbitration in cases where they would fall to be determined by the Lands Tribunal⁷ on account of the failure by a person who is (or who asserts he his) the person with responsibility for subsidence affecting land⁸ to agree to the arbitration or any other method of determining the question⁹; and
- 162 (3) for regulating the conduct of such arbitrations¹⁰.

The Secretary of State may by regulations provide for the expenses of maintaining procedures to be met in whole or in part by some or all of the persons with responsibility for subsidence affecting land or in other ways¹¹, and also provide for one or more of the parties to a reference¹² to be required to pay, or make a contribution towards, the costs or other expenses incurred in relation to that reference by any person¹³.

Regulations under these provisions may provide for prescribed matters to be determined¹⁴ by the Coal Authority¹⁵ and for the recovery by that Authority of expenses so incurred from other persons with responsibility for subsidence affecting land¹⁶.

1 As to the Secretary of State see PARA 4 ante.

2 See the Coal Mining Subsidence (Arbitration Schemes) Regulations 1994, SI 1994/2566. The Coal Mining Subsidence Act 1991 s 50 (see PARA 204 ante) applies to the power to make regulations under these provisions as it applies to any power to make regulations or orders under that Act: Coal Industry Act 1994 s 47(10). As to the Secretary of State's power to make regulations or orders see PARA 204 ante.

3 Ie by agreement or in accordance with regulations under head (2) in the text: see *ibid* s 47(2)(a).

4 Ie such arbitration as may be prescribed by regulations under *ibid* s 47: s 47(2)(a), (10). As to arbitration generally see ARBITRATION vol 2 (2008) PARA 1201 et seq.

5 The questions referred to in PARA 251 heads (1)-(3) ante.

6 Coal Industry Act 1994 s 47(2)(a). The Coal Mining Subsidence (Arbitration Schemes) Regulations 1994, SI 1994/2566, apply to questions referred to in the Coal Industry Act 1994 s 47(1) and to any question under the Coal Mining Subsidence Act 1991 other than those arising under s 32 (see PARA 241 ante) or s 36 (as amended) (see PARA 243 ante): see the Coal Mining Subsidence (Arbitration Schemes) Regulations 1994, SI 1994/2566, reg 2. The Arbitration Act 1996 Pt I (ss 1-84) applies (subject to ss 95-98) to arbitrations under these provisions: see s 94; and ARBITRATION vol 2 (2008) PARA 1201 et seq.

7 See PARA 251 note 3 ante.

8 As to the responsible person see PARA 206 ante.

9 Coal Industry Act 1994 s 47(2)(b). The Coal Mining Subsidence (Arbitration Schemes) Regulations 1994, SI 1994/2566, establishes two arbitration schemes: (1) the Householders Arbitration Scheme for the determination of questions arising between responsible persons and householders (see reg 3(1), Sch 1); and (2) the General

Arbitration Scheme for the determination of other questions (see reg 3(2), Sch 2). 'Householder' means a person who occupies a dwelling-house and who either is the owner of it or is liable to make good any damage to it in whole or part: reg 1(2).

10 Coal Industry Act 1994 s 47(2)(c). Disputes are to be determined by a single arbitrator appointed by the Arbitration Body established under the Coal Mining Subsidence (Arbitration Schemes) Regulations 1994, SI 1994/2566: see regs 4, 7. Any question concerning the arbitration procedure is to be determined according to the law of the place where the arbitration is held (see reg 6(1)), and subject to this, the dispute is to be determined according to the law for the time being in force in England and Wales as the parties may agree or, in default of agreement, as determined by the arbitrator (reg 6(2)).

11 Coal Industry Act 1994 s 47(7)(a); and see the Coal Mining Subsidence (Arbitration Schemes) Regulations 1994, SI 1994/2566, reg 8 which makes provision as to the costs of the Arbitration Body.

12 Ie a reference in accordance with the regulations: see the Coal Industry Act 1994 s 47(7)(b).

13 Ibid s 47(7)(b). As to the costs of arbitration proceedings see the Coal Mining Subsidence (Arbitration Schemes) Regulations 1994, SI 1994/2566, reg 5, Schs 1, 2.

14 Ie in such manner and by reference to such factors as may be described in the regulations: see the Coal Industry Act 1994 s 47(8)(a).

15 As to the Coal Authority see PARA 52 et seq ante.

16 Coal Industry Act 1994 s 47(8)(b). As to the apportionment of the costs of the Arbitration Body amongst responsible persons and for the recovery by the Authority of the amounts so apportioned see the Coal Mining Subsidence (Arbitration Schemes) Regulations 1994, SI 1994/2566, reg 8.

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(c) Notices, Information and Reports

253. Notices to owners and occupiers of property.

Where it is proposed to carry on any underground coal-mining operations¹, the responsible person² must give to the owners or occupiers³ of any land which might be affected by subsidence as a result of the operations notice⁴ there is a risk of their land being so affected⁵; and must also give notice that he has done so to any organisation appearing to be representative of those owners or occupiers⁶. Where notice that there is a risk of the land being affected by subsidence has been given, the responsible person must give notice to the owners or occupiers of any of the following facts:

- 163 (1) any decision not to proceed with the proposed operations⁷;
- 164 (2) anything which gives the responsible person reason to believe that there is no longer any risk of the land being affected by subsidence⁸; and
- 165 (3) the discontinuance of any operations which have been carried on⁹.

The responsible person must¹⁰ from time to time, until notice is given of any of the facts in heads (1) to (3) above, give notice to the owners or occupiers reminding them of any risk there may be of the land being, or having been, affected by subsidence¹¹. Failure to give a required notice is an offence¹².

The Secretary of State¹³ may by regulations¹⁴ make provision as to the contents and form of the notices¹⁵, the times at which and the manner in which they are to be given¹⁶, and any information, forms and documents which are to accompany them¹⁷.

1 As to the position where underground coal-mining operations proposed to be carried on after 30 November 1991 can be regarded as a continuation of operations carried on before that date, see the Coal Mining Subsidence Act 1991 s 53(1), Sch 7 para 7.

2 Ie the person who would be the responsible person in relation to any subsidence damage to that land if such damage were to result from the operations: see the Coal Industry Act 1994 s 43(8), Sch 6 para 8. As to the responsible person see PARA 206 ante.

3 For these purposes, references, in relation to any land, to the owners or occupiers include references to any person who is the owner or occupier of any part of the land or is liable to make good in whole or in part any subsidence damage affecting the land: Coal Mining Subsidence Act 1991 s 46(8)(b). For the meaning of 'owner' see PARA 209 note 5 ante; and for the meaning of 'subsidence damage' see PARA 205 ante. References to land include references to any buildings, structures or works on, in or over land: s 46(8)(a). For the meaning of 'structure' and as to the meaning of 'works' see PARA 205 note 3 ante.

4 For the meaning of 'notice' see PARA 212 note 5 ante.

5 Coal Mining Subsidence Act 1991 s 46(1)(a).

6 Ibid s 46(1)(b).

7 Ibid s 46(3)(a).

8 Ibid s 46(3)(b).

9 Ibid s 46(3)(c).

10 Ie where a notice has been given under ibid s 46(1)(a): see s 46(4).

11 Ibid s 46(4). If no other time for giving a notice under s 46(4) is prescribed by regulations under s 46(5) (b), the responsible person must give the notice within the period of one year beginning with the date on which the most recent notice under s 46 (as amended) was given: s 46(6).

12 See the Coal Industry Act 1994 s 48(5), (6); and PARA 256 post.

13 As to the Secretary of State see PARA 4 ante.

14 See the Coal Mining Subsidence (Provision of Information) Regulations 1994, SI 1994/2565; and notes 15-17 infra. As to the Secretary of State's power to make regulations or orders see PARA 204 ante. The Coal Mining Subsidence Act 1991 provides that in the event that no other manner for giving notice is prescribed the responsible person must take all reasonably practicable steps for bringing the notice to the attention of the person to whom it is to be given: s 46(7).

15 Ibid s 46(5)(a). The regulations made under s 46 (as amended) provide that every notice given to the owners or occupiers of any land in accordance with s 46(1)(a) or s 46(4) must be accompanied by the following information:

100 (1) the full name and address of the person with responsibility giving the notice (Coal Mining Subsidence (Provision of Information) Regulations 1994, SI 1994/2565, reg 2(1)(a));

101 (2) the place or places of business at which that person may be contacted during normal business hours, and any telephone or facsimile transmission number for communicating with him at every such place (reg 2(1)(b)); and

102 (3) a copy of the document known as '*Coal Mining Subsidence Damage - a Guide to Claimants' Rights*' as for the time being issued by the Secretary of State (Coal Mining Subsidence (Provision of Information) Regulations 1994, SI 1994/2565, reg 2(1)(c)).

Where an employee or agent of the person with responsibility is appointed to represent him in his dealings with the owner or occupier in relation to subsidence damage to the land (a) the information to be furnished must include the name of that employee or agent (reg 2(2)(a)); and (b) head (2) supra has effect with the substitution for references to the person with responsibility of references to that employee or agent (reg 2(2)(b)).

16 Coal Mining Subsidence Act 1991 s 46(5)(b). When, on a person other than the British Coal Corporation (as to which see PARAS 2-3 ante) becoming a person with responsibility in relation to any land a notice under s 46(1) or s 46(4) has been given to any owner or occupier of the land less than 12 months before the happening of that event, and since the giving of that notice no notice has fallen to be given under heads (1)-(3) in the text, the person with responsibility must, within the period of 3 months commencing with the date of his becoming that person, give to the owners or occupiers of the land any notice falling to be given under s 46(3), or if no such notice falls to be given, notice under s 46(4): Coal Mining Subsidence (Provision of Information) Regulations 1994, SI 1994/2565, reg 3(1), (2).

17 Coal Mining Subsidence Act 1991 s 46(5)(c) (amended by the Coal Industry Act 1994 s 45(4)); and see note 15 supra.

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254. Notices to local authorities.

Where it is proposed to carry on any underground coal-mining operations¹, the responsible person² must give notice³ of the operations to any local authority⁴ whose area includes land which may be affected by subsidence as a result of the operations⁵. Where any underground coal-mining operations are being carried on, the responsible person must give notice of such facts as may be prescribed⁶ to any local authority whose area includes land which has been or may be affected by subsidence as a result of the operations⁷. Failure to give a required notice is an offence⁸.

The Secretary of State⁹ may make provision by regulations¹⁰ as to the contents and form of such notices¹¹, the times at which they are to be given¹², and any information, forms and documents which are to accompany them¹³.

Each local authority must secure that copies of all notices and other information received by it¹⁴ are made available, at all reasonable times, for inspection by the public free of charge, and must also provide facilities for obtaining copies of such documents on payment of a reasonable fee¹⁵.

1 As to the position where underground coal-mining operations proposed to be carried on after 30 November 1991 can be regarded as a continuation of operations carried on before that date, see the Coal Mining Subsidence Act 1991 s 53(1), Sch 7 para 7.

2 I.e. the person who would be the responsible person in relation to any subsidence damage to that land if such damage were to result from the operations: see the Coal Industry Act 1994 s 43(8), Sch 6 para 8. As to the responsible person see PARA 206 ante. For the meaning of 'subsidence damage' see PARA 205 ante.

3 For the meaning of 'notice' see PARA 212 note 5 ante.

4 For these purposes, 'local authority' means: (1) in relation to England the council of a district or non-metropolitan county; and (2) in relation to Wales, the council of a county or county borough: Coal Mining Subsidence Act 1991 s 47(6) (amended by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 91, Sch 18).

5 Coal Mining Subsidence Act 1991 s 47(1).

6 For the meaning of 'prescribed' see PARA 212 note 8 ante.

7 Coal Mining Subsidence Act 1991 s 47(2).

8 See the Coal Industry Act 1994 s 48(5), (6); and PARA 256 post.

9 As to the Secretary of State see PARA 4 ante.

10 At the date at which this volume states the law no such regulations had been made. As to the Secretary of State's power to make regulations or orders see PARA 204 ante.

11 Coal Mining Subsidence Act 1991 s 47(4)(a).

12 Ibid s 47(4)(b).

13 Ibid s 47(4)(c) (amended by the Coal Industry Act 1994 s 45(4)).

14 I.e. under the Coal Mining Subsidence Act 1991 s 47 (as amended): see s 47(5)(a).

15 Ibid s 47(5)(b).

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255. Reports on the operation of the Coal Mining Subsidence Act 1991.

The Secretary of State¹ may give directions to the Coal Authority² requiring it, on or before a specified date or at specified intervals, to make a report to him on the operation of the Coal Mining Subsidence Act 1991 during any specified period or periods³. The Secretary of State's directions may specify the matters to be dealt with, and any particular information to be given, in the report and the form in which the report is to be made⁴. He may also require the Authority to publish the report⁵. The Secretary of State must lay a copy of every such report received by him before Parliament⁶.

1 As to the Secretary of State see PARA 4 ante.

2 See the Coal Industry Act 1994 s 43(8), Sch 6 para 10. As to the Coal Authority see PARA 52 et seq ante.

3 Coal Mining Subsidence Act 1991 s 49(1). Consequently it is not necessary for any annual report made under the Coal Industry Nationalisation Act 1946 s 54 (repealed by the Coal Industry Act 1994 s 67(8), Sch 11 Pt IV as from the dissolution date) after the 30 November 1991 to include any report on the operation of the Coal Mining Subsidence Act 1991: s 49(4). As from a day to be appointed s 49(4) is repealed by the Coal Industry Act 1994 Sch 11 Pt III. At the date at which this volume states the law, no such day had been appointed. As to the dissolution date see PARAS 3 note 25, 89 ante.

4 Coal Mining Subsidence Act 1991 s 49(2)(a).

5 Ibid s 49(2)(b).

6 Ibid s 49(3).

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256. Offences with respect to subsidence information.

It is an offence for any person¹ for specified purposes² in relation to the Coal Mining Subsidence Act 1991:

- 166 (1) to furnish any other person with any information which he knows to be false in a material particular³;
- 167 (2) recklessly to furnish any other person with any information which is false in a material particular⁴; or
- 168 (3) to withhold any information from any person with intent to deceive⁵.

A licensed operator⁶ is guilty of an offence if he:

- 169 (a) furnishes the Coal Authority⁷ with any information which he knows to be false in a material particular⁸;
- 170 (b) recklessly furnishes the Authority with any subsidence information⁹ which is false in a material particular¹⁰; or
- 171 (c) with intent to deceive, withholds any subsidence information from the Authority¹¹.

Any person who fails to give any notice which he is required to give to property owners¹² and local authorities¹³ in accordance with the statutory requirements¹⁴ is guilty of an offence¹⁵. A person guilty of an offence under these provisions is liable, on summary conviction, to a fine not exceeding the statutory maximum¹⁶ and, on conviction on indictment, to a fine¹⁷.

1 This includes a body of persons corporate or unincorporate: Interpretation Act 1978 s 5, Sch 1. As to offences by bodies corporate under the Coal Industry Act 1994 see PARA 113 ante.

2 A person is guilty of an offence if he engages in the conduct mentioned in heads (1)-(3) in the text for the purposes of:

- 103 (1) obtaining for himself or any other person any benefit under the Coal Mining Subsidence Act 1991 (Coal Industry Act 1994 s 48(1)(a)); or
- 104 (2) facilitating the temporary or permanent avoidance, by himself or any other person, of the whole or any part of:
 - 9. (a) any obligation under the Coal Mining Subsidence Act 1991 (Coal Industry Act 1994 s 48(1)(b)(i));
 - 10. (b) any other requirement mentioned in the Coal Industry Act 1994 s 47(9)(a)-(c) (see PARA 251 note 6 heads (1)-(3) ante) (s 48(1)(b)(ii)); or
 - 11. (c) any liability for contravention of any such obligation or requirement (s 48(1)(b)(iii)).

For the meaning of 'contravention' see PARA 56 note 7 ante.

3 Ibid s 48(2)(a).

4 Ibid s 48(2)(b). As to recklessness generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 11 et seq.

5 Ibid s 48(2)(c).

6 For the meaning of 'licensed operator' see PARA 60 note 12 ante.

7 As to the Coal Authority see PARA 52 et seq ante.

8 Coal Industry Act 1994 s 48(3)(a).

9 'Subsidence information', in relation to a person who is or has been a licensed operator, means information relating to the extent of the existing or potential liabilities of that person in respect of subsidence damage: ibid s 48(4). For the meaning of 'subsidence damage' see PARA 205 ante (definition applied by s 65(1)).

10 Ibid s 48(3)(b).

11 Ibid s 48(3)(c).

12 Ie in accordance with the Coal Mining Subsidence Act 1991 s 46 (as amended) (see PARA 253 ante): see the Coal Industry Act 1994 s 48(5).

13 Ie in accordance with the Coal Mining Subsidence Act 1991 s 47 (as amended) (see PARA 254 ante): see the Coal Industry Act 1994 s 48(5).

14 As to the requirement to give notices to property owners see PARA 253 ante; and as to the requirement to give notices to local authorities see PARA 254 ante.

15 Coal Industry Act 1994 s 48(5). In any proceedings against a person for an offence by virtue of s 48(5) it is a defence for that person to show that he took such steps as were reasonable to avoid commission of the offence: s 48(6).

16 Ibid s 48(7)(a). As to the statutory maximum see PARA 106 note 15 ante.

17 Ibid s 48(7)(b).

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(5) RIGHTS OF WAY

257. General principles.

A person may construct a road through his own mine¹ by virtue of his right of property in the mine; and for this purpose the term 'mine' in an exception is not restricted to the mineral stratum, but includes a layer of the adjoining soil sufficient for working the excepted mine in a proper manner².

Rights of way may also exist as rights in another's land appurtenant to a mine³. In such a case the dominant owner is not entitled as against the servient owner to the exclusive use of the right of way⁴, and it appears that the servient owner may make alterations in the way provided he does not obstruct it⁵.

Common law provisions are supplemented by statutory provisions whereby a mine operator may have conferred on him rights of way, whether on the surface or (as appropriate) underground⁶.

1 For the meaning of 'mine' see PARA 5 ante.

2 *Batten Pooll v Kennedy* [1907] 1 Ch 256; following *Proud v Bates* (1865) 34 LJ Ch 406; *Duke of Hamilton v Graham* (1871) LR 2 Sc & Div 166; *Eardley v Granville* (1876) 3 ChD 826; and distinguishing *Ramsay v Blair* (1876) 1 App Cas 701, HL.

3 As to the principles governing rights of way generally see EASEMENTS AND PROFITS A PRENDRE.

4 See *R v Jolliffe* (1787) 2 Term Rep 90 at 95 per Buller J.

5 *Bradburn v Morris, Morris v Bradburn* (1876) 3 ChD 812 at 821, CA, per James LJ, and at 823 per Mellish LJ.

6 As to rights of airway, shaftway or surface or underground wayleave see the Mines (Working Facilities and Support) Act 1966 (see PARAS 383-398 post), which applies to all minerals. As to the meaning of 'minerals' see PARA 12 note 23 ante. As to additional rights in relation to underground land for the purposes of coal-mining operations see the Coal Industry Act 1994 s 51; and PARA 399 post. As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante. As to the authorisation of, and facilities for, opencast working of coal see the Opencast Coal Act 1958 Pt I (ss 4-16) (as amended); and PARA 415 et seq post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(5) RIGHTS OF WAY/258. General wayleave.

258. General wayleave.

A general grant¹ of wayleave, in connection with mines², but undefined in position, will authorise the construction and use of such a way as is necessary, having regard to the surrounding circumstances of the case or the requirements of the grantee³. Thus a right of wayleave may authorise a framed wagon-way, if it is necessary for the carriage of coals⁴; and the term 'sufficient wayleave' may authorise the construction of a fenced railway, if this is necessary to enable the minerals⁵ to be worked at a reasonable profit⁶.

1 As to the creation of rights of way by express grant see EASEMENTS AND PROFITS A PRENDRE.

2 For the meaning of 'mine' see PARA 5 ante.

3 See *Farrow v Vansittart* (1839) 1 Ry & Can Cas 602 at 609.

4 *Senhouse v Christian* (1787) 1 Term Rep 560.

5 For the meaning of 'minerals' see PARA 12 ante.

6 *Dand v Kingscote* (1840) 6 M & W 174. The right, under a Canal Act passed before the introduction of locomotive engines, to make railways or roads to convey coals to the canal authorised the construction of railways for the use of locomotive engines: *Bishop v North* (1843) 11 M & W 418.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(5) RIGHTS OF WAY/259. Particular wayleave.

259. Particular wayleave.

If the purposes for which the way is to be used are defined in the grant, the user is restricted to these purposes¹. Thus a right of wagon-way² or a mere right of passage³ will not authorise the construction and use of a tramway or railway; and a grant for all purposes except the carriage of minerals⁴, or for agricultural purposes⁵ or other purposes not including mining purposes⁶, will not authorise the carriage of minerals. A right of way for minerals cannot be used for other purposes⁷, and a right for the carriage of minerals from a particular mine⁸ does not authorise the carriage of foreign minerals⁹, nor, if a terminus is defined, carriage beyond that terminus¹⁰. It is a question of construction whether a wayleave is limited to the carriage of minerals from a particular mine¹¹.

1 *Duke of Hamilton v Graham* (1871) LR 2 Sc & Div 166 at 169 per Lord Hatherley LC; and see EASEMENTS AND PROFITS A PRENDRE.

2 *Farrow v Vansittart* (1839) 1 Ry & Can Cas 602 at 609; *Re Bidder and North Staffordshire Rly Co* (1878) 4 QBD 412 at 429, CA, per Bramwell LJ (affd sub nom *Elliot v North Staffordshire Rly Co* [1881] WN 52, HL).

3 *Duke of Beaufort v Bates* (1862) 3 De GF & J 381 at 392 per Turner LJ; *Neath Canal Co v Ynisarwed Resolven Colliery Co* (1875) 10 Ch App 450.

4 *Marquis of Stafford v Coyney* (1827) 7 B & C 257. For the meaning of 'minerals' see PARA 12 ante.

5 *Bradburn v Morris, Morris v Bradburn* (1876) 3 ChD 812, CA.

6 *Cowling v Higginson* (1838) 4 M & W 245.

7 *Durham and Sunderland Rly Co v Walker* (1842) 2 QB 940, Ex Ch; *Meynell v Surtees* (1854) 3 Sm & G 101 at 117-118 per Stuart V-C; *Farrow v Vansittart* (1839) 1 Ry & Can Cas 602.

8 For the meaning of 'mine' see PARA 5 ante.

9 *Dand v Kingscote* (1840) 6 M & W 174; *Durham and Sunderland Rly Co v Walker* (1842) 2 QB 940, Ex Ch; *Midgley v Richardson* (1845) 14 M & W 595.

10 See *James v Cochrane* (1853) 8 Exch 556 at 573 et seq, Ex Ch, per Coleridge J.

11 The grant was held to be general in *Re Bidder and North Staffordshire Rly Co* (1878) 4 QBD 412, CA (affd sub nom *Elliot v North Staffordshire Rly Co* [1881] WN 52, HL); *James v Cochrane* (1853) 8 Exch 556, Ex Ch; *Bowes v Lord Ravensworth* (1855) 15 CB 512; *Proud v Bates* (1865) 34 LJ Ch 406. Where land is granted for the purpose of constructing and using a mineral railway, then, according to the terms of the grant, the land may be used for any other purpose not inconsistent with its use as a mineral railway: *Attwood v Llay Main Collieries Ltd* [1926] Ch 444.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(5) RIGHTS OF WAY/260. Direction of way.

260. Direction of way.

When it arises by implication of law¹, the right of way must be exercised in some convenient direction². Under an express grant the direction is in general defined, and no material deviation may be made from the defined route, although the deviation may be sanctioned by acquiescence³. Where no definite route is prescribed the road may be constructed in the most convenient direction for getting to the mines⁴; the shortest practicable route need not be chosen⁵.

1 As to the creation of rights of way by implication of law see EASEMENTS AND PROFITS A PRENDRE.

2 *Staple v Heydon* (1703) 6 Mod Rep 1 at 3.

3 *Mold v Wheatcroft* (1859) 27 Beav 510. As to the right to deviate by reason of obstruction see EASEMENTS AND PROFITS A PRENDRE.

4 For the meaning of 'mine' see PARA 5 ante.

5 *Richards v Richards* (1859) John 255.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(5) RIGHTS OF WAY/261. User of prescriptive right of way.

261. User of prescriptive right of way.

Where a right of way is acquired by prescription¹ the burden on the servient tenement may not be increased by more onerous user or by the construction of a more onerous way²; but, while user for a particular purpose will not in general justify a user for other purposes or for a different object³, user for a variety of purposes may be evidence of a right of user for all purposes⁴.

1 As to the creation of rights of way by prescription see EASEMENTS AND PROFITS A PRENDRE.

2 *Marquis of Stafford v Coyney* (1827) 7 B & C 257.

3 *Cowling v Higginson* (1838) 4 M & W 245; *Bradburn v Morris, Morris v Bradburn* (1876) 3 ChD 812, CA. As to particular wayleave see PARA 259 ante.

4 *Wimbledon and Putney Commons Conservators v Dixon* (1875) 1 ChD 362, CA.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(5) RIGHTS OF WAY/262. Obstruction and wrongful user.

262. Obstruction and wrongful user.

The obstruction of a private right of way will give rise to a claim for damages¹. The dominant owner is also entitled to an injunction² and, if necessary, to a mandatory injunction³.

If a right of way is wrongly claimed an injunction will in general be granted to restrain the future user⁴; and if rails have been wrongfully laid⁵, or an aperture is made in adjoining land⁶ for the carriage of minerals⁷, an injunction will be granted to compel the wrongdoer to remove the rails or to stop up the aperture; but not if the wrongdoer merely uses an aperture wrongfully made by another person, although he will be compelled to allow the injured party access to enable him to stop it up⁸.

1 *Bell v Midland Rly Co* (1861) 10 CBNS 287; *Mold v Wheatcroft* (1859) 27 Beav 510 at 521 per Romilly MR; and see EASEMENTS AND PROFITS A PRENDRE. As to damages generally see DAMAGES.

2 *Newmarch v Brandling* (1818) 3 Swan 99. See also the cases cited in note 1 supra. As to the principles upon which injunctions are granted see CIVIL PROCEDURE vol 11 (2009) PARA 331 et seq.

3 See *Bradburn v Morris*, *Morris v Bradburn* (1876) 3 ChD 812, CA; and CIVIL PROCEDURE vol 11 (2009) PARA 376 et seq.

4 *Powell v Aiken* (1858) 4 K & J 343; *Wright v Pitt* (1870) LR 12 Eq 408 at 417 per Malins V-C; *Phillips v Homfray*, *Fothergill v Phillips* (1871) 6 Ch App 770; *Wimbledon and Putney Commons Conservators v Dixon* (1875) 1 ChD 362, CA; *Eardley v Granville* (1876) 3 ChD 826 at 832 per Jessel MR.

5 *Neath Canal Co v Ynisarwed Resolven Colliery Co* (1875) 10 Ch App 450.

6 *Powell v Aiken* (1858) 4 K & J 343.

7 For the meaning of 'minerals' see PARA 12 ante.

8 *Powell v Aiken* (1858) 4 K & J 343.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(5) RIGHTS OF WAY/263. Trespass.

263. Trespass.

If a mine¹ owner carries minerals² through land in which he has neither a right of property nor a right of way, he commits a trespass in respect of which a claim for damages will lie³. Similarly, if he uses a way of a kind unauthorised by his grant⁴, or in a direction which is unauthorised⁵, or for improper purposes⁶ such as for the carriage of foreign minerals, he may be liable in damages⁷.

1 For the meaning of 'mine' see PARA 5 ante.

2 For the meaning of 'minerals' see PARA 12 ante.

3 *Monmouth Canal Co v Harford* (1834) 1 Cr M & R 614.

4 *Neath Canal Co v Ynisarwed Resolven Colliery Co* (1875) 10 Ch App 450.

5 *Senhouse v Christian* (1787) 1 Term Rep 560; *Abson v Fenton* (1823) 1 B & C 195; *Dand v Kingscote* (1840) 6 M & W 174 at 198, 199 per Parke B.

6 *Howell v King* (1674) 1 Mod Rep 190; *Marquis of Stafford v Coyney* (1827) 7 B & C 257; *Dand v Kingscote* (1840) 6 M & W 174 at 195 per Parke B; *Midgley v Richardson* (1845) 14 M & W 595; *Powell v Vickerman* (1887) 3 TLR 358.

7 These principles do not apply to a way which exists by virtue of a right of property: see *Batten Pool v Kennedy* [1907] 1 Ch 256.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(5) RIGHTS OF WAY/264. Measure of damages or compensation.

264. Measure of damages or compensation.

The measure of damages for the trespass on another's land by the carriage of minerals¹ is the value of the land for the purposes for which it is used; compensation is measured by wayleave rent in respect of the minerals carried², and the rate, if any, used in the neighbourhood is adopted as a convenient measure³.

In the case of rights granted compulsorily under the Opencast Coal Act 1958 special provisions as to compensation apply⁴. Special provisions also apply to compensation for the grant of rights under the Mines (Working Facilities and Support) Act 1966⁵.

1 For the meaning of 'minerals' see PARA 12 ante.

2 See *Martin v Porter* (1839) 5 M & W 351; *Powell v Aiken* (1858) 4 K & J 343; *Hilton v Woods* (1867) LR 4 Eq 432; *Jegon v Vivian* (1871) 6 Ch App 742; *Phillips v Homfray*, *Fothergill v Phillips* (1871) 6 Ch App 770; *A-G v Tomline* (1880) 15 ChD 150, CA; and DAMAGES.

3 *Whitwham v Westminster Brymbo Coal and Coke Co* [1896] 2 Ch 538, CA.

4 Compensation is assessed in accordance with the Opencast Coal Act 1958 Pt II (ss 17-36) (as amended): see PARA 452 et seq post.

5 Compensation is determined by the court, in accordance with the Mines (Working Facilities and Support) Act 1966 s 8: see PARA 397 post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(6) RIGHTS AS TO WATER/(i) Use of Water/265. Natural watercourses.

(6) RIGHTS AS TO WATER

(i) Use of Water

265. Natural watercourses.

The natural right enjoyed by a riparian proprietor¹ to use the water of a stream cannot be granted to a non-riparian proprietor²; and a lessee of mines³ under land adjoining a stream is not, as regards the user of the water in the stream, a riparian proprietor⁴. The reasonable use of the stream to which a riparian proprietor is entitled includes the abstraction of reasonable quantities for the purpose of working machinery connected with his mines⁵; and his proprietary rights relate to water flowing on the surface of the land or below it⁶ provided that the water flows in a known and defined channel⁷. However, the abstraction of water from any source of supply is subject to statutory control⁸.

A riparian proprietor is not bound to submit to a greatly increased flow of water caused by the discharge into the stream of water raised from mines by artificial means⁹. Nor is a mine owner entitled by working the minerals¹⁰ under a river to cause subsidence of the bed so as sensibly to interfere with the flow to a lower riparian tenement¹¹; still less is he entitled to tap the bed of the river and divert the water through his own workings into those of his neighbour¹².

1 As to the natural rights of a riparian owner to use water see generally WATER AND WATERWAYS vol 100 (2009) PARA 81 et seq.

2 *Ormerod v Todmorden Joint Stock Mill Co Ltd* (1883) 11 QBD 155, CA; *Stockport Waterworks Co v Potter* (1864) 3 H & C 300 at 326 per Pollock CB; and see *Attwood v Llay Main Collieries Ltd* [1926] Ch 444.

3 For the meaning of 'mine' see PARA 5 ante.

4 *Insole v James* (1856) 1 H & N 243.

5 See *Attwood v Llay Main Collieries Ltd* [1926] Ch 444; and WATER AND WATERWAYS vol 100 (2009) PARA 95. As to pollution see PARA 269 post.

6 *Black v Ballymena Township Comrs* (1886) 17 LR Ir 459; *Chasemore v Richards* (1859) 7 HL Cas 349; and see WATER AND WATERWAYS vol 100 (2009) PARA 69.

7 *Grand Junction Canal Co v Shugar* (1871) 6 Ch App 483; *Acton v Blundell* (1843) 12 M & W 324, Ex Ch; *English v Metropolitan Water Board* [1907] 1 KB 588; *Blackrod UDC v John Crankshaw & Co Ltd* (1913) 136 LT Jo 239; and see further EASEMENTS AND PROFITS A PRENDRE.

8 Ie under the Water Resources Act 1991 Pt II Ch II (ss 24-72) (as amended): see WATER AND WATERWAYS vol 100 (2009) PARA 133. For the meaning of 'source of supply' see the Water Resources Act 1991 s 221(1); and WATER AND WATERWAYS vol 100 (2009) PARA 187.

9 *John Young & Co v Bankier Distillery Co* [1893] AC 691, HL.

10 For the meaning of 'minerals' see PARA 12 ante.

11 *Elwell v Crowther* (1862) 31 Beav 163. Rights to alter and divert streams for mining purposes are conferred by the Inclosure Act 1859 s 3.

12 *Crompton v Lea* (1874) LR 19 Eq 115.

UPDATE

265 Natural watercourses

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(6) RIGHTS AS TO WATER/(i) Use of Water/266. Artificial watercourses.

266. Artificial watercourses.

There may be a right to conduct water in an artificial channel over adjoining land¹, in which event a party through whose land the water flows prima facie may abstract² or divert the water without liability to other owners through whose land it flows³. If the water is discharged for a temporary and particular purpose, such as for the draining of mines⁴ or by tapping a natural source for mining purposes, no right to the uninterrupted use of the stream will be acquired by persons through whose land it flows⁵; but if the stream was originally intended to have a permanent flow, or if the party by whom it was caused to flow has abandoned, without intention to resume, the works by which the flow was caused, and given up all right to and control over the stream, rights may be acquired by prescription both as against the person from whose land the stream issues and any person through whose land it flows, similar to the rights existing in natural streams *ex jure naturae*⁶.

1 This right must exist as an easement. As to the creation of such a right see EASEMENTS AND PROFITS A PRENDRE.

2 As to statutory control of the abstraction of water see PARA 265 text and note 8 ante.

3 *Wood v Waud* (1849) 3 Exch 748; *Nuttall v Bracewell* (1866) LR 2 Exch 1 at 14 per Channell B; and see WATER AND WATERWAYS vol 100 (2009) PARA 92.

4 For the meaning of 'mine' see PARA 5 ante.

5 *Arkwright v Gell* (1839) 5 M & W 203; *Gaved v Martyn* (1865) 19 CBNS 732; *Chamber Colliery Co v Hopwood* (1886) 32 ChD 549, CA; *Burrows v Lang* [1901] 2 Ch 502.

6 *Gaved v Martyn* (1865) 19 CBNS 732 at 759 per Erle CJ; *Ivimey v Stocker* (1866) 1 Ch App 396; *Baily & Co v Clark, Son and Morland* [1902] 1 Ch 649, CA; *Whitmores (Edenbridge) Ltd v Stanford* [1909] 1 Ch 427; cf *Ennor v Barwell* (1860) 2 Giff 410 at 419-421 per Stuart V-C (on appeal 1 De GF & J 529).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(6) RIGHTS AS TO WATER/(i) Use of Water/267. Remedies for infringement of rights.

267. Remedies for infringement of rights.

A claim in damages lies if the natural or acquired rights of a riparian proprietor are infringed¹, and an injunction will generally be given to restrain the continuance of the injury², even if no actual damage is proved³. If a prima facie case is shown, inspection of the neighbour's property may be obtained on interim application⁴. The infringement of rights in an artificial watercourse also gives rise to the right to damages and to an injunction⁵, but if the aggrieved party allows his neighbour to incur expenditure the right to an injunction may be lost, and an injunction will not readily be granted if the result would be to cause inconvenience or injury in the working of a mine⁶.

1 *Bastard v Smith* (1838) 2 Mood & R 129 (natural rights); *Pennington v Brinsop Hall Coal Co* (1877) 5 ChD 769 at 773, 774 per Fry J. As to the rights of a riparian proprietor see WATER AND WATERWAYS vol 100 (2009) PARA 81 et seq.

2 *Ennor v Barwell* (1860) 2 Giff 410; on appeal 1 De GF & J 529.

3 *Pennington v Brinsop Hall Coal Co* (1877) 5 ChD 769. For remedies in respect of the infringement of riparian rights see generally WATER AND WATERWAYS vol 100 (2009) PARA 103. As to the remedy of injunction see CIVIL PROCEDURE vol 11 (2009) PARA 331 et seq.

4 See *Ennor v Barwell* (1860) 1 De GF & J 529; and cf *Bradford Corp v Ferrand* [1902] 2 Ch 655, DC. See PARA 40 note 4 ante.

5 *Gaved v Martyn* (1865) 19 CBNS 732; *Ivimey v Stocker* (1866) 1 Ch App 396.

6 *Birmingham Canal Co v Lloyd* (1812) 18 Ves 515; and see CIVIL PROCEDURE vol 11 (2009) PARA 388. For the meaning of 'mine' see PARA 5 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(6) RIGHTS AS TO WATER/(i) Use of Water/268. Percolating water.

268. Percolating water.

As there is no natural right in respect of water flowing in an undefined channel¹, a mine² owner who, in carrying on mining operations in the usual manner, drains away water from adjacent and superjacent land so that the wells and springs become dry is under no liability in respect of such drainage³; but the right to prevent the abstraction or diversion of water which percolates through the soil may be acquired by grant; thus a person who has conveyed land containing wells may be precluded from abstracting the water which supplies the wells, and damages may be recovered for the infringement of that right⁴.

1 As to rights of water in natural watercourses see PARA 265 ante.

2 For the meaning of 'mine' see PARA 5 ante.

3 *Acton v Blundell* (1843) 12 M & W 324, Ex Ch; *Ballacorkish Silver, Lead and Copper Mining Co Ltd v Harrison* (1873) LR 5 PC 49; and see *Langbrook Properties Ltd v Surrey County Council* [1969] 3 All ER 1424, [1970] 1 WLR 161. As to percolating water generally see EASEMENTS AND PROFITS A PRENDRE; ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 272. As to statutory control of the abstraction of water see PARA 265 text and note 8 ante. As to brine pumped to the surface, obtained by the dissolution of rock salt underground the source of which cannot be definitely ascertained see *Salt Union Ltd v Brunner, Mond & Co* [1906] 2 KB 822.

4 *Whitehead v Parks* (1858) 2 H & N 870.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(6) RIGHTS AS TO WATER/(i) Use of Water/269. Pollution.

269. Pollution.

A person is not guilty of any of the principal offences relating to water pollution¹ by reason only of his permitting water from an abandoned mine² or an abandoned part of a mine³ to enter controlled waters⁴. A person is not guilty of such an offence, otherwise than in respect of the entry of any poisonous, noxious or polluting matter into any controlled waters⁵, by reason of his depositing the solid refuse of a mine or quarry⁶ on any land so that it falls or is carried into inland freshwaters⁷ if he deposits the refuse on the land with the consent of the Environment Agency, no other site for the deposit is reasonably practicable and he takes all reasonably practicable steps to prevent the refuse from entering those inland freshwaters⁸. It is a tort, in the absence of statutory authority, to pollute the water of a natural watercourse to the prejudice of other persons entitled to the use of the water⁹.

1 See the Water Resources Act 1991 s 85; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 291.

2 For the meaning of 'mine' see PARA 5 note 17 ante. As to the duty to inform the Environment Agency of abandonment of mines see PARA 529 post. As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; WATER AND WATERWAYS vol 100 (2009) PARA 17.

3 See PARA 529 post.

4 See the Water Resources Act 1991 s 89(3) (amended by the Environment Act 1995 s 60(1)); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 295. The Water Resources Act 1991 s 89(3) (as amended) does not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31 December 1991: s 89(3A) (s 89(3A)-(3C) added by the Environment Act 1995 s 60(2)). As to the determination of when a mine or part of a mine became abandoned see the Water Resources Act 1991 s 89(3B), (3C) (as so added); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 295.

5 It is an offence under ibid s 85(1): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 291.

6 For the meaning of 'quarry' see PARA 6 ante.

7 For the meaning of 'inland freshwaters' see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 299.

8 See the Water Resources Act 1991 s 89(4) (amended by the Environment Act 1995 s 120(1), Sch 22 para 130).

9 See EASEMENTS AND PROFITS A PRENDRE; ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 270.

UPDATE

269 Pollution

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(6) RIGHTS AS TO WATER/ (ii) Discharge of Water/270. Right to permit percolation.

(ii) Discharge of Water

270. Right to permit percolation.

Incident to property in land there is a right to permit water naturally present to flow or percolate under the action of gravitation to land or underground strata at a lower level¹, in which case the only remedy of the lower owner is to protect himself by the retention or erection of barriers². However, prima facie there is no right on the part of the upper owner to be an active agent in discharging water into land at a lower level by interference with the action of gravitation, or by conducting the water through artificial channels constructed for that purpose³.

1 As to the right to permit percolation see generally WATER. See also *Smith v Kenrick* (1849) 7 CB 515; *John Young & Co v Bankier Distillery Co* [1893] AC 691 at 697, HL, per Lord Watson, and at 701 per Lord Shand. As to the discharge of water into 'controlled waters' see PARA 269 ante.

2 See *Smith v Kenrick* (1849) 7 CB 515; *Baird v Williamson* (1863) 15 CBNS 376 at 392 per Erle CJ.

3 See *Gaved v Martyn* (1865) 19 CBNS 732 at 758, obiter, per Erle CJ; *Roberts v Rose* (1865) LR 1 Exch 82, Ex Ch; *Baird v Williamson* (1863) 15 CBNS 376; *Lomax v Stott* (1870) 39 LJ Ch 834.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(6) RIGHTS AS TO WATER/ (ii) Discharge of Water/271. Percolation caused by working mines.

271. Percolation caused by working mines.

The occupier of a mine¹ is entitled to get all the minerals² in his mine in a skilful and usual course of working³, and legitimate operations conducted for that purpose do not impose a liability upon the owner of mines lying at a higher level, if the result⁴ is to permit the escape of water which collects in the workings, or even if the natural flow is increased. Thus the removal of a stratum⁵, or the construction between two parallel inclined seams of a passage for the carriage of minerals which incidentally allows water to flow along it⁶, or working in a proper manner which results in surface cracks and allows surface water to enter⁷, or getting the minerals by quarrying where that is the usual mode of working in the district⁸, or damming up water by a barrier so that water accumulates and overflows into an adjacent mine⁹, or increasing the natural flow by vigorous working¹⁰, does not impose liability upon the owner of an upper mine in respect of injury caused to the adjoining mine owner by the inflow of water resulting from the respective operations. It is essential, however, that the mining operations should be ordinary, reasonable and proper. Operations which result in the flooding of a mine and are of no advantage to the owner of that mine are not ordinary, reasonable or proper¹¹.

1 For the meaning of 'mine' see PARA 5 ante.

2 For the meaning of 'minerals' see PARA 12 ante.

3 As to the relationships between operators of coal mines whose operations interact with each other see PARA 96 ante.

4 It is in any case a precondition of liability that the escape of water should have been caused or permitted by the defendant's working: *Westhoughton Coal and Cannel Co Ltd v Wigan Coal Corp Ltd* [1939] Ch 800, [1939] 3 All ER 579, CA.

5 *Smith v Kenrick* (1849) 7 CB 515; *Hurdman v North Eastern Rly Co* (1878) 3 CPD 168 at 174, CA, per Cotton LJ.

6 *Baird v Williamson* (1863) 15 CBNS 376.

7 *Wilson v Waddell* (1876) 2 App Cas 95, HL.

8 See *Smith v Fletcher* (1874) LR 9 Exch 64, Ex Ch; affd (1877) 2 App Cas 781, HL.

9 *Lomax v Stott* (1870) 39 LJ Ch 834.

10 *Scots Mines Co v Leadhills Mines Co* (1859) 34 LTOS 34, HL.

11 *Crompton v Lea* (1874) LR 19 Eq 115. Whether particular mining operations are ordinary, reasonable and proper is a question of fact in each case: *Crompton v Lea* supra.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(6) RIGHTS AS TO WATER/ (ii) Discharge of Water/272. Liability in case of trespass.

272. Liability in case of trespass.

A mine¹ owner who trespasses on an adjoining mine and pierces a barrier² is liable in respect of the injury caused by the inflow of water³; but the damage is consequential on the original trespass and must be recovered once for all; there is no continuing nuisance and a subsequent trespasser cannot be sued in respect of further damage⁴.

1 For the meaning of 'mine' see PARA 5 ante.

2 As to the relationships between operators of coal mines whose operations interact with each other see PARA 96 ante.

3 *Firmstone v Wheeley* (1844) 2 Dow & L 203; *Clegg v Dearden* (1848) 12 QB 576; *Smith v Kenrick* (1849) 7 CB 515.

4 *Clegg v Dearden* (1848) 12 QB 576; *Smith v Kenrick* (1849) 7 CB 515. However, as to liability for allowing an existing nuisance to continue see *Leakey v National Trust for Places of Historic Interest or Natural Beauty* [1980] QB 485, [1980] 1 All ER 17, CA; and NUISANCE vol 78 (2010) PARA 182.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(6) RIGHTS AS TO WATER/ (ii) Discharge of Water/273. Diversion of water.

273. Diversion of water.

The diversion of the flow of water within the limits of the mine¹ owner's own property does not render him liable if the burden upon the lower owner is not increased by it², but it is otherwise if the result of the operations is to increase the volume of the discharge or to alter its direction³.

1 For the meaning of 'mine' see PARA 5 ante.

2 *West Cumberland Iron and Steel Co v Kenyon* (1879) 11 ChD 782, CA.

3 See *Smith v Kenrick* (1849) 7 CB 515; *Rylands v Fletcher* (1868) LR 3 HL 330; *West Cumberland Iron and Steel Co v Kenyon* (1879) 11 ChD 782 at 785-790, CA. However, see also *Leakey v National Trust for Places of Historic Interest or Natural Beauty* [1980] QB 485, [1980] 1 All ER 17, CA; and NUISANCE vol 78 (2010) PARA 118.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(6) RIGHTS AS TO WATER/ (ii) Discharge of Water/274. Pumping.

274. Pumping.

A mine¹ owner is not, prima facie, entitled to pump up water from his mine and discharge it into a stream in which his neighbour has riparian rights², or to conduct water to a mine at a lower level by artificial pipes³ or channels⁴. He will be liable for the damage caused if he pumps up water from a lower part of his mine and allows it to descend by gravitation into the adjoining mine⁵, or conducts water to a weak spot in his neighbour's boundary⁶.

1 For the meaning of 'mine' see PARA 5 ante.

2 *John Young & Co v Bankier Distillery Co* [1893] AC 691, HL. As to statutory control of the abstraction of water see PARA 265 text and note 8 ante. As to statutory control of the discharge of water see PARA 269 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 288 et seq. As to the relationships between operators of coal mines whose operations interact with each other see PARA 96 ante.

3 *Lomax v Stott* (1870) 39 LJ Ch 834; cf *Westhoughton Coal and Cannel Co Ltd v Wigan Coal Corp'n Ltd* [1939] Ch 800, [1939] 3 All ER 579, CA.

4 *Baird v Williamson* (1863) 15 CBNS 376 at 390, 391 per Erle CJ; *Phillips v Homfray, Fothergill v Phillips* (1871) 6 Ch App 770 at 781 per Lord Hatherley LC.

5 *Baird v Williamson* (1863) 15 CBNS 376 at 391 per Erle CJ.

6 *Westminster Brymbo Coal and Coke Co v Clayton* (1867) 36 LJ Ch 476 at 478 per Wood V-C.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(6) RIGHTS AS TO WATER/ (ii) Discharge of Water/275. Landowner's liability.

275. Landowner's liability.

Prima facie a person is liable for all the damage which may result from the escape of water which he has collected¹ and retained upon his land for his own purposes. Thus he is liable if water which he has collected and retained breaks into a subjacent mine². His liability does not depend upon any question of negligence or unusual or unreasonable user³. However, the right to discharge water into a neighbour's mine may be acquired as an easement⁴ by grant, by prescription or by statute⁵, whether the water does or does not originate in the land of the dominant owner⁶.

1 It is otherwise where the accumulation is due to natural causes: *Rouse v Gravelworks Ltd* [1940] 1 KB 489, [1940] 1 All ER 26, CA.

2 See *Rylands v Fletcher* (1868) LR 3 HL 330; and NUISANCE vol 78 (2010) PARAS 147 et seq, 186, 197. For the meaning of 'mine' see PARA 5 ante.

3 *Rylands v Fletcher* (1868) LR 3 HL 330 at 340-342 per Lord Cranworth.

4 See EASEMENTS AND PROFITS A PRENDRE.

5 Mining easements in respect of water are provided for by the Railways Clauses Consolidation Act 1845 s 80 (as substituted) (see PARA 137 ante); the Waterworks Clauses Act 1847 s 24 (repealed, but the repeal does not affect statutes which have incorporated this provision in so far as it has not been superseded by the Water Act 1945 s 32, Sch 3 (largely repealed, with savings, by the Water Act 1989 s 190(3), Sch 27) or by any later enactment); the Water Act 1945 Sch 3 para 15 (repealed with savings); the Inclosure Act 1859 s 3; the Acquisition of Land Act 1981 s 3, Sch 2 para 5(1) (see PARA 168 ante); and the Water Industry Act 1991 s 188, Sch 14 para 3(1) (see WATER AND WATERWAYS vol 101 (2009) PARA 495).

6 As to discharge into 'controlled waters' see PARA 269 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 299 et seq.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/(6) RIGHTS AS TO WATER/(iii) Water Conservation/276. Mining operations which may affect water conservation.

(iii) Water Conservation

276. Mining operations which may affect water conservation.

Where a person proposes to construct or extend a boring for the purpose of searching for or extracting minerals¹, he must, before he begins to construct or extend the boring, give to the Environment Agency² a notice³ of his intention in the prescribed form⁴.

1 For the meaning of 'minerals' see PARA 12 ante.

2 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; WATER AND WATERWAYS vol 100 (2009) PARA 17.

3 As to the service of documents see the Water Resources Act 1991 s 220; and WATER AND WATERWAYS vol 100 (2009) PARA 22.

4 Water Resources Act 1991 s 199(1) (amended by the Environment Act 1995 s 120(1), Sch 22 para 128). For the prescribed form see the Water Resources (Miscellaneous Provisions) Regulations 1965, SI 1965/1092, reg 7(2), Schedule, as having effect by virtue of the Water Consolidation (Consequential Provisions) Act 1991 s 2(2), Sch 2 para 1. As to notice etc of mining operations which may affect water conservation see WATER AND WATERWAYS vol 100 (2009) PARA 193. As to notices with respect to borings not requiring licences see the Water Resources Act 1991 s 30 (as amended).

UPDATE

276 Mining operations which may affect water conservation

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 4--Water Resources Act 1991 s 30 repealed: Water Act 2003 s 8(3). SI 1965/1092 reg 7(2), Schedule revoked: SI 2006/641 (amended by SI 2008/165). Water Resources Act 1991 s 30 repealed: Water Act 2003 s 8(3), Sch 9 Pt 1.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/ (7) RIGHTS AS TO AIR/277. Underground ventilation.

(7) RIGHTS AS TO AIR

277. Underground ventilation.

Prima facie a mine¹ owner has no right to ventilate his own mine by making an aperture into or an airway through his neighbour's mine², and apparently he may not ventilate his mine by sending his air into his neighbour's mine or by drawing air from that mine into his own, even though he makes no airway through or into his neighbour's mine for the purpose. If, however, through the operation of natural causes, or in consequence of his neighbour's acts, the mine owner's mine is ventilated by the passage of air from his mine to his neighbour's mine, or in the opposite direction, no cause of action accrues to the neighbouring owner: his only remedy is to block up the aperture³.

If a mine owner wrongfully ventilates his mine by driving a passage through or into his neighbour's land, prima facie his neighbour will be entitled to a mandatory injunction to compel the wrongdoer to stop up the aperture⁴. Where the wrongdoer is succeeded in possession by a person who is privy to him in title and who continues to use the airway, then, although a mandatory injunction will not be issued against the subsequent occupier, the court will order that the aggrieved person be permitted to have access to the aperture for the purpose of closing it, and an injunction will be issued against the continuance of the user of the air-course⁵.

The measure of damages in respect of the wrongful user of a neighbouring mine for the purpose of ventilation is the diminution, if any, in the value of the neighbouring mine plus such a sum as represents a reasonable payment for the user so enjoyed⁶. Damages will, therefore, be assessed upon the basis of the quantity of minerals⁷ which the wrongdoer has gotten from his own mine and which has been made accessible by the ventilation through his neighbour's land, and may be awarded in the form of an air-leave rent or royalty on such quantity⁸.

1 For the meaning of 'mine' see PARA 5 ante.

2 *Powell v Aiken* (1858) 4 K & J 343; *Bowser v Maclean* (1860) 2 De GF & J 415.

3 *Powell v Aiken* (1858) 4 K & J 343; and see *Jegon v Vivian* (1871) 6 Ch App 742 at 759 per Lord Hatherley LC; *Phillips v Homfray*, *Fothergill v Phillips* (1871) 6 Ch App 770 at 781 per Lord Hatherley LC; *Powell v Vickerman* (1887) 3 TLR 358. As to the relationships between operators of coal mines whose operations interact with each other see PARA 96 ante.

4 *Powell v Aiken* (1858) 4 K & J 343 at 356 per Page Wood V-C; and see *Phillips v Homfray*, *Fothergill v Phillips* (1871) 6 Ch App 770 at 776. As to mandatory injunctions generally see CIVIL PROCEDURE vol 11 (2009) PARA 376 et seq.

5 *Powell v Aiken* (1858) 4 K & J 343 at 356-357 per Page Wood V-C.

6 See *Whitwham v Westminster Brymbo Coal and Coke Co* [1896] 2 Ch 538, CA; and DAMAGES.

7 For the meaning of 'minerals' see PARA 12 ante.

8 *Bowser v Maclean* (1860) 2 De GF & J 415; *Phillips v Homfray*, *Fothergill v Phillips* (1871) 6 Ch App 770.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/ (7) RIGHTS AS TO AIR/278. Easements of air.

278. Easements of air.

A right to ventilate a mine¹ by means of a passage into or through a neighbour's land may exist as an easement, and may be created by grant, by implication of law or by prescription². A right to the passage of air not flowing through a defined channel may be the subject of express grant or covenant, but cannot be claimed by prescription³. A right to cut an airway may also be created by statute⁴.

1 For the meaning of 'mine' see PARA 5 ante.

2 See EASEMENTS AND PROFITS A PRENDRE.

3 See EASEMENTS AND PROFITS A PRENDRE.

4 Eg under the mining codes, which restrict the right to work minerals lying below railway and water undertakings: see PARA 168 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/ (7) RIGHTS AS TO AIR/279. Nuisance at common law.

279. Nuisance at common law.

The emission of smoke, fumes or noxious vapours in such circumstances that the value of neighbouring property is diminished, or the beneficial use of that property interfered with, constitutes an actionable nuisance at common law¹ for which damages may be recovered², and the commission of which will, in general, be restrained by injunction³. The person primarily liable in respect of a nuisance is the person who has created it⁴ or authorised its creation⁵, but in certain circumstances the occupier of premises from which a nuisance has emanated may also be liable⁶.

1 *St Helen's Smelting Co v Tipping* (1865) 11 HL Cas 642; and see generally NUISANCE vol 78 (2010) PARAS 123, 126, 127. The escape of noxious fumes may also attract the principle of *Rylands v Fletcher* (1868) LR 3 HL 330: see NUISANCE vol 78 (2010) PARAS 147 et seq, 186, 197.

2 See generally DAMAGES.

3 *Walter v Selfe* (1851) 4 De G & Sm 315; and see CIVIL PROCEDURE vol 11 (2009) PARA 437; NUISANCE.

4 *Thompson v Gibson* (1841) 7 M & W 456. See generally NUISANCE vol 78 (2010) PARA 182.

5 *Harris v James* (1876) 45 LJQB 545; cf *Rich v Basterfield* (1847) 4 CB 783.

6 *White v Jameson* (1874) LR 18 Eq 303.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/ (7) RIGHTS AS TO AIR/280. Statutory controls on emissions of smoke etc.

280. Statutory controls on emissions of smoke etc.

The owner¹ of a mine² or quarry³ to which provisions of the Clean Air Act 1993 apply⁴ must employ all practicable means⁵ for preventing combustion of refuse deposited from the mine or quarry; and for preventing or minimising the emission of smoke⁶ and fumes⁷ from such refuse; and if he fails to do so, he is guilty of an offence⁸. A person⁹ guilty of such an offence¹⁰ is liable on summary conviction to a fine not exceeding level 5 on the standard scale¹¹; or to cumulative penalties on continuance¹².

- 1 For the meaning of 'owner' see PARA 512 post (definition applied by the Clean Air Act 1993 s 42(6)).
- 2 For the meaning of 'mine' see PARA 5 note 14 ante (definition applied by ibid s 42(6)).
- 3 For the meaning of 'quarry' see PARA 6 ante.
- 4 Ie the provisions of ibid s 42 (as amended). Section 42 (as amended) applies to any mine or quarry from which coal or shale has been, is being or is to be got: s 42(1).
- 5 'Practicable means' includes the provision and maintenance of plant and its proper use: ibid s 64(1).
- 6 'Smoke' includes soot, ash, grit and gritty particles emitted in smoke: ibid s 64(1).
- 7 'Fumes' means any airborne solid matter smaller than dust: ibid s 64(1).
- 8 Ibid s 42(2). Neither the provisions of the Environmental Protection Act 1990 Pt III (ss 79-84) nor any provision of the Clean Air Act 1993 Pts 1-III (ss 1-29) (as amended) apply in relation to smoke, grit or dust from the combustion of refuse deposited from any mine or quarry to which s 42 (as amended) applies: s 42(4). The Secretary of State may, by regulations, apply all or any of the provisions of s 42(4) to fumes or prescribed gases or both as they apply to grit and dust: see s 47(1)(a). Section 42(2)-(4) does not apply to any deposit of refuse deposited from a mine or quarry before 5 July 1956 (the date of the passing of the Clean Air Act 1956) if at that date the deposit was not longer in use as such and was not under the control of the owner of the mine or quarry: Clean Air Act 1993 s 67(2), Sch 5 para 10. As to the Secretary of State see PARA 4 ante.
- 9 'Person' includes a body of persons corporate or unincorporate: see the Interpretation Act 1978 s 5, Sch 1.
- 10 Ie an offence under the Clean Air Act 1993 s 42(2): see s 42(3).
- 11 As to the standard scale see PARA 98 note 12 ante.
- 12 Ie in accordance with the Clean Air Act 1993 s 50: see s 42(3).

UPDATE

280 Statutory controls on emissions of smoke etc

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/ (8) SURFACE RIGHTS ON DISPOSITION/281. Express and implied rights of working.

(8) SURFACE RIGHTS ON DISPOSITION

281. Express and implied rights of working.

Upon the severance of mines¹ from the surface, whether by grant or exception, working powers and liberties are usually expressly granted or reserved², but in the absence of express provision there is incident, by implication of law, to the ownership of mines a power to get and carry away the minerals³, and on the same principle an express power will give rise to an implication of all incidental liberties necessary for the exercise of the power⁴. An implied liberty will not be curtailed by the terms of an express power which may be exercisable to a greater extent or for a longer period⁵, but it will be curtailed if the express power is in such terms as necessarily restrict the implied liberty⁶. An implied liberty may be available if the grant of the express liberty is invalid⁷.

Prima facie there is incident to the ownership of mines, subject to planning legislation⁸, power on the part of the mine owner to enter upon the surface⁹, to dig pits and get the minerals¹⁰, to drive shafts vertically through an upper seam¹¹, or to make underground communications through a vertical barrier separating excepted mines¹². However, the power to win and work will not be implied if the process, as in the case of quarrying, will be destructive of or permanently injurious to the surface¹³. Such a power will only be conferred if the instrument of severance grants the liberty in clear and unambiguous language¹⁴.

1 For the meaning of 'mine' see PARA 5 ante.

2 Provision is made for powers of working and incidental liberties in connection with minerals by various public general Acts, namely in the case of inclosures (see the Inclosure Act 1859; and COMMONS vol 13 (2009) PARA 419 et seq); in favour of the Duke of Cornwall and his lessees in respect of mines in the assessionable manors of the Duchy and mines under the foreshore in the Duchy (see CROWN PROPERTY); in favour of the Crown and persons claiming under it in respect of mines under the sea adjacent to Cornwall (see CROWN PROPERTY); in favour of the Crown in respect of the foreshore or adjacent land (see CROWN PROPERTY); and in favour of persons licensed under the Coal Industry Act 1994 Pt II (ss 25-36) (as amended) (see PARA 91 et seq ante). See *Honeywell Cotton Spinning Co v Marland* [1875] WN 46. For the position where land is granted for building purposes excepting the minerals see *Robinson v Milne* (1884) 53 LJ Ch 1070; and BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS vol 4(3) (Reissue) PARA 89. For the meaning of 'minerals' see PARA 12 ante.

3 Cf *Shep Touch* (8 Edn) 89, 100; *Earl of Cardigan v Armitage* (1823) 2 B & C 197 at 207 per Bayley J; *Durham and Sunderland Rly Co v Walker* (1842) 2 QB 940 at 968, Ex Ch, per Tindal CJ; *Re Wilson Syndicate Conveyance, Wilson v Shorrock* [1938] 3 All ER 599 at 603 per Bennett J. See, to the contrary, *Harris v Ryding* (1839) 5 M & W 60 at 65 per Lord Abinger CB. As to easements created by implication of law see EASEMENTS AND PROFITS A PRENDRE.

4 *Dand v Kingscote* (1840) 6 M & W 174 at 196 per Parke B. The limitation to such implied or incidental powers, and the manner in which express powers must be exercised, are discussed in dealing with leases: see PARA 328 et seq post.

5 *Stukeley v Butler* (1614) Hob 168; *Earl of Cardigan v Armitage* (1823) 2 B & C 197 at 211 per Bayley J; cf *Hodgson v Field* (1806) 7 East 613.

6 *Re Wilson Syndicate Conveyance, Wilson v Shorrock* [1938] 3 All ER 599, where express power for getting minerals by underground working was held to exclude implied power to destroy the surface.

7 *Whidborne v Ecclesiastical Comrs for England* (1877) 7 ChD 375 at 381.

8 See PARA 355 post; and TOWN AND COUNTRY PLANNING.

9 For the measure of compensation where there is express power to occupy and use surface land subject to the payment of compensation see *Mordue v The Dean and Chapter of Durham* (1873) LR 8 CP 336.

10 *Earl of Cardigan v Armitage* (1823) 2 B & C 197 at 207 per Bayley J; *Durham and Sunderland Rly Co v Walker* (1842) 2 QB 940 at 968, Ex Ch, per Tindal CJ. See, to the contrary, *Harris v Ryding* (1839) 5 M & W 60 at 65 per Lord Abinger CB.

11 *Gould v Great Western Deep Coal Co* (1865) 2 De GJ & Sm 600.

12 *Re Lord Gerard and London and North Western Rly Co* [1895] 1 QB 459 at 466, CA, per Lord Esher MR, and at 471 per Rigby LJ.

13 *Bell v Wilson* (1866) 1 Ch App 303; *Hext v Gill* (1872) 7 Ch App 699 at 714 per Mellish LJ; *Whidborne v Ecclesiastical Comrs for England* (1877) 7 ChD 375 at 379-381 per Hall V-C; *Midland Rly Co v Miles* (1886) 33 ChD 632 at 647 per Stirling J; and see *General Accident Fire and Life Assurance Corpn Ltd v British Gypsum Ltd* [1967] 3 All ER 40, [1967] 1 WLR 1215.

14 *Hext v Gill* (1872) 7 Ch App 699 at 714, 717-718 per Mellish LJ. See *A-G v Welsh Granite Co* (1887) 35 WR 617, CA; and cf *Re Wilson Syndicate Conveyance, Wilson v Shorrock* [1938] 3 All ER 599.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/ (8) SURFACE RIGHTS ON DISPOSITION/282. Implication of ancillary powers.

282. Implication of ancillary powers.

An express liberty to dig pits implies *prima facie* a right, subject to planning regulation¹, to fix on the surface machinery necessary for draining the mines and raising the minerals². Similarly, it has been held that a liberty with employees, carriages and horses to enter and carry away the minerals may authorise the construction of a railway³, and liberty to make a sough or drain carries with it liberty to make sough pits for its repair⁴. To an express right of working is probably incidental the right to deposit minerals and spoil on the surface⁵, or, in the case of a quarry, to deposit spoil upon the grantor's adjoining land⁶; and an express right to work implies a power, so far as it is necessary for winning and getting the minerals, to remove overlying strata and intermixed minerals⁷ but not to appropriate intermixed minerals or minerals in overlying strata⁸ unless they are of the nature of spoil⁹. Refuse produced in refining the minerals gotten may be sold by the lessee, but refuse or spoil, if abandoned, becomes part of the freehold¹⁰.

1 See PARA 355 et seq post; and TOWN AND COUNTRY PLANNING.

2 *Dand v Kingscote* (1840) 6 M & W 174 at 196 per Parke B. As to the express and implied powers, in leases, to bore and sink see PARA 328 et seq post. For the meaning of 'mine' see PARA 5 ante; and for the meaning of 'minerals' see PARA 12 ante.

3 *Earl of Antrim v Dobbs* (1891) 30 LR Ir 424.

4 *Hodgson v Field* (1806) 7 East 613.

5 *Earl of Cardigan v Armitage* (1823) 2 B & C 197 at 211 per Bayley J; *Marshall v Borrowdale Plumbago Mines and Manufacturing Co Ltd* (1892) 8 TLR 275.

6 *Middleton v Clarence* (1877) IR 11 CL 499.

7 *Robinson v Milne* (1884) 53 LJ Ch 1070 at 1074 per North J.

8 *Rogers v Brenton* (1847) 10 QB 26 at 56 per Lord Denman CJ (intermixed minerals); *Goold v Great Western Deep Coal Co* (1865) 2 De GJ & Sm 600 at 608 per Lord Westbury (overlying strata).

9 *Robinson v Milne* (1884) 53 LJ Ch 1070.

10 *Boileau v Heath* [1898] 2 Ch 301.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/ (8) SURFACE RIGHTS ON DISPOSITION/283. Spoilbanks.

283. Spoilbanks.

If there is express power in a lease to deposit spoil, the spoilbanks belong to the lessee¹. Where spoil from a colliery is wrongfully deposited on land, the measure of damages in respect of land actually used is the diminution, if any, in the value of that land plus such a sum as represents a reasonable payment for the user of it².

1 *Robinson v Milne* (1884) 53 LJ Ch 1070. As to powers in leases see PARA 328 et seq post.

2 *Whitwham v Westminster Brymbo Coal and Coke Co* [1896] 2 Ch 538, CA.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/4. RIGHTS AFFECTING MINES IN GENERAL/ (8) SURFACE RIGHTS ON DISPOSITION/284. Liability to fence workings.

284. Liability to fence workings.

Prima facie it is the duty of a mine¹ owner properly to fence a shaft sunk through the surface in the exercise of a liberty, whether express or implied; failure in this respect renders him liable in respect of injuries to cattle of the surface owner which fall through the shaft².

1 For the meaning of 'mine' see PARA 5 ante.

2 *Williams v Groucott* (1863) 4 B & S 149; and see BOUNDARIES vol 4(1) (2002 Reissue) PARA 949. As to the duty to fence an abandoned mine see PARA 530 post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(1) POWERS OF DISPOSITION/(i) Powers of Absolute Disposition/285. Limited owners.

5.

(1) POWERS OF DISPOSITION

(i) Powers of Absolute Disposition

285. Limited owners.

In relation to an estate in fee simple, persons other than the beneficial owner of the land and minerals¹ may have a power to dispose absolutely of land and minerals. These powers include those of the tenant for life of settled land², trustees³, personal representatives⁴, mortgagees⁵ and persons having an interest in land subject to compulsory acquisition⁶.

If the land and minerals are partnership property, a disposition of them is governed by the law of partnership⁷. If the person otherwise entitled to dispose of the land is under a disability by reason of minority or mental disorder, his power of disposition may be restricted⁸.

¹ For the meaning of 'minerals' see PARA 12 ante.

² Prior to 1 January 1997 a tenant for life of settled land might sell or exchange the settled land or any part of it or any easement, right or privilege of any kind over or in relation to the land: see the Settled Land Act 1925 s 38(i), (iii). He might deal with the surface and minerals separately: see s 50. See SETTLEMENTS. However, as from 1 January 1997 the Trusts of Land and Appointment of Trustees Act 1996 introduced, in place of strict settlements, a new system of holding land on trust with the imposition of the 'trust of land': see ss 1(2), 4, 27(2); and the Trusts of Land and Appointment of Trustees Act 1996 (Commencement) Order 1996, SI 1996/2974. Accordingly, no settlement created after the 1 January 1997 is a settlement for the purposes of the Settled Land Act 1925; and no settlement is to be deemed to be made under the Settled Land Act 1925 after 1 January 1997: see the Trusts of Land and Appointment of Trustees Act 1996 s 2(1); and the Trusts of Land and Appointment of Trustees Act 1996 (Commencement) Order 1996, SI 1996/2974. For the purpose of exercising their functions as trustees, the trustees of land have in relation to the land subject to the trust all the powers of an absolute owner: Trusts of Land and Appointment of Trustees Act 1996 s 6(1). 'Trustees of land' means trustees of a trust of land: s 1(1)(b). As to the phasing out of strict settlements under the Settled Land Act 1925 see the Trusts of Land and Appointment of Trustees Act 1996 s 2, Sch 1; REAL PROPERTY; SETTLEMENTS; TRUSTS.

³ Eg prior to 1 January 1997 under the Settled Land Act 1925 ss 23(1), 26(1) and the Law of Property Act 1925 s 28(1) (repealed), and on or after 1 January 1997 under the Trusts of Land and Appointment of Trustees Act 1996 s 6(1), (3) (as amended): see SETTLEMENTS; REAL PROPERTY; TRUSTS. As to the law relating to trustees generally see TRUSTS.

⁴ See the Administration of Estates Act 1925 s 39(1)(iii) (as amended); the Trusts of Land and Appointment of Trustees Act 1996 s 18; and EXECUTORS AND ADMINISTRATORS.

⁵ See the Law of Property Act 1925 s 101(1), (2); and MORTGAGE vol 77 (2010) PARA 101 et seq.

⁶ See the Lands Clauses Consolidation Act 1845 s 6; the Compulsory Purchase Act 1965 s 3 (as amended); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 550 et seq.

⁷ See PARTNERSHIP.

⁸ See CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 30 et seq; MENTAL HEALTH vol 30(2) (Reissue) PARA 687 et seq; SETTLEMENTS.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(1) POWERS OF DISPOSITION/(i) Powers of Absolute Disposition/286. Co-owners.

286. Co-owners.

Where persons are co-owners of a mine¹, the trustees in whom the mine is vested², apart from their powers of sale³, may partition the property⁴. In the case of persons who are co-owners of the mine and partners in the mine, or in the mine and the working⁵, a sale by one owner of his share, without the consent of the others⁶, is probably a ground of dissolution of the partnership⁷.

1 As to co-owners see PARA 367 post. For the meaning of 'mine' see PARA 5 ante.

2 See PARA 367 post.

3 See SETTLEMENTS. As to the introduction of the 'trust of land' see the Trusts of Land and Appointment of Trustees Act 1996 s 2(1); and PARA 285 note 2 ante.

4 Before prior to 1 January 1997 this was with the consent of the co-owners of full age interested in possession: see the Law of Property Act 1925 s 28(3) (repealed); and see *Crawshay v Maule* (1818) 1 Swan 495 at 518 per Lord Eldon LC. On or after 1 January 1997 the trustees of land may, where beneficiaries of full age are absolutely entitled in undivided shares to land subject to the trust, partition the land, or any part of it, and provide (by way of mortgage or otherwise) for the payment of any equality money: see the Trusts of Land and Appointment of Trustees Act 1996 s 7 (as amended); and REAL PROPERTY. For the meaning of 'trustees of land' see PARA 285 note 2 ante.

5 As to such co-owners see PARA 368 post.

6 See PARA 369 post.

7 As to the grounds of dissolution of the partnership see PARTNERSHIP vol 79 (2008) PARA 174 et seq.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(1) POWERS OF DISPOSITION/(i) Powers of Absolute Disposition/287. The Crown.

287. The Crown.

The Crown Estate Commissioners¹ have certain powers of sale and other disposal of mines and minerals comprised in land which is the property of the Crown².

Subject to certain formalities, mines and minerals which form part of the private estates of the Crown may be disposed of by sale or gift, or by will or other testamentary disposition, as freely in all respects as by an ordinary subject³ but a purchaser from the Crown is not entitled to covenants for title⁴.

1 As to the constitution, composition and functions of the Crown Estate Commissioners see the Crown Estate Act 1961 s 1; and CROWN PROPERTY.

2 As to their powers of sale and other disposal see generally CROWN PROPERTY. As to the meaning of 'mines and minerals' see PARA 12 ante; for the meaning of 'mine' see PARA 5 ante.

3 As to the sovereign's right to dispose of private estates see generally CROWN PROPERTY.

4 As to covenants for title see generally CROWN PROPERTY.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(1) POWERS OF DISPOSITION/(i) Powers of Absolute Disposition/288. The Duchy of Cornwall.

288. The Duchy of Cornwall.

The Duke of Cornwall may, either by way of absolute sale or for a limited period, dispose of any mines¹, minerals² or rights of entry or other rights in respect of mines and minerals forming part of the possessions of the Duchy. The disposition may be made subject to any reservations or exceptions³. He may also exchange mines or minerals in accordance with the provisions of the Inclosure Acts⁴.

1 For the meaning of 'mine' see PARA 5 ante.

2 For the meaning of 'minerals' see PARA 12 ante.

3 As to the power to alienate Duchy land see generally CROWN PROPERTY vol 12(1) (Reissue) PARA 318 et seq. When there is no Duke of Cornwall, the Duchy is vested in the Sovereign: see generally CROWN PROPERTY.

4 As to inclosure of land generally see COMMONS vol 13 (2009) PARA 418 et seq. As to the Inclosure Acts generally see COMMONS vol 13 (2009) PARA 419 et seq.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(1) POWERS OF DISPOSITION/(i) Powers of Absolute Disposition/289. Ecclesiastical corporations.

289. Ecclesiastical corporations.

With certain exceptions¹, all ecclesiastical corporations, both aggregate and sole, may, with the approval of the Church Commissioners², sell, exchange, lease or otherwise dispose of any mines or minerals the property of the corporation³. Diocesan boards of finance have similar powers in relation to mines and minerals vested in them⁴.

1 As to the exceptions see the Ecclesiastical Leasing Act 1842 s 1 (as amended), incorporated by reference in the Ecclesiastical Leasing Act 1858 s 1; and ECCLESIASTICAL LAW.

2 As to the Church Commissioners see ECCLESIASTICAL LAW.

3 See the Ecclesiastical Leasing Act 1858 s 1; and ECCLESIASTICAL LAW. The Ecclesiastical Leasing Acts 1842 and 1858 no longer apply to incumbents: see the Endowments and Glebe Measure 1976 s 47(3), Sch 7. For the meaning of 'mine' see PARA 5 ante; and for the meaning of 'minerals' see PARA 12 ante.

4 As to the transfer to diocesan boards of finance see the Endowments and Glebe Measure 1976 ss 20, 45(1) (both as amended); and ECCLESIASTICAL LAW.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(1) POWERS OF DISPOSITION/(ii) Powers of Leasing/290. General principles.

(ii) Powers of Leasing

290. General principles.

In relation to an estate in fee simple, a person other than the beneficial owner of the land and minerals¹ may have a power to lease land and minerals. Such a power may subsist as a common law power², or it may be conferred by statute³. If the person otherwise entitled to grant a lease of the land is under a disability by reason of minority or mental disorder, his power of leasing may be restricted⁴. There are also special rules governing the granting of leases by certain persons and bodies⁵.

1 For the meaning of 'minerals' see PARA 12 ante.

2 See PARA 291 post.

3 See PARA 292 post.

4 As to the capacity of persons under disability to grant leases generally see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 49; LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 73 et seq; MENTAL HEALTH vol 30(2) (Reissue) PARA 690; SETTLEMENTS.

5 Eg ecclesiastical corporations (see PARA 289 ante); trustees (see PARA 293 post); universities and colleges (see PARA 294 post); charities (see PARA 295 post); the Crown and the Duke of Cornwall (see PARA 296 post); and mortgagees (see MORTGAGE vol 77 (2010) PARA 101 et seq).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(1) POWERS OF DISPOSITION/(ii) Powers of Leasing/291. Common law power of leasing.

291. Common law power of leasing.

A limited owner has a common law power to make a demise for a term not exceeding the duration of his own estate¹. Every power of appointment over, or power to convey or charge land or any interest in it, whether created by a statute or other instrument or implied by law, and whether created before or after the commencement of the Law of Property Act 1925 (not being a power vested in a legal mortgagee or an estate owner in right of his estate and exercisable by him or by another person in his name and on his behalf), operates only in equity². Subject to this statutory restriction, powers of leasing may be created by instrument or implied by law³. In particular, where there was an agreement that a settlement relating to land is to contain all usual powers, it appears that a power for the tenant for life to grant mining leases may be included⁴. As from 1 January 1997 no new settlements can be created under the Settled Land Act 1925⁵.

1 See LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 73 et seq.

2 See the Law of Property Act 1925 s 1(7); and POWERS.

3 See the text to note 2 supra.

4 *Hill v Hill* (1834) 6 Sim 136 at 145 per Shadwell V-C in relation to powers in a strict settlement; and see POWERS; SETTLEMENTS. A grant of a mining lease by a tenant for life would have normally been made under the statutory power: see PARA 292 post.

5 As to the phasing out of strict settlements and the introduction of the 'trust of land' see the Trusts of Land and Appointment of Trustees Act 1996 s 2(1); and PARA 285 note 2 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(1) POWERS OF DISPOSITION/(ii) Powers of Leasing/292. Statutory powers of leasing.

292. Statutory powers of leasing.

Under the Settled Land Act 1925, a tenant for life, or person having the powers of a tenant for life, might grant mining leases¹ of mines², open or new, for a term not exceeding 100 years; and the court could, with respect to the district in which any settled land is situated, enlarge this power in certain circumstances³.

As from 1 January 1997 no new settlements can be created under the Settled Land Act 1925⁴. The Trusts of Land and Appointment of Trustees Act 1996 introduces a new unitary system of holding land on trust. For the purpose of exercising their functions as trustees, the trustees of land⁵ have in relation to the land subject to the trust all the powers of an absolute owner⁶. The trustees of land may, by power of attorney, delegate to any beneficiary⁷ or beneficiaries of full age and beneficially entitled to an interest in possession in land subject to the trust any of their functions as trustees which relate to the land⁸. A beneficiary to whom such powers are delegated can therefore grant mining leases⁹.

1 For the purposes of the Settled Land Act 1925, 'mining lease' means a lease for any mining purposes or purposes connected therewith, and includes a grant or licence for any mining purposes: see s 117(1)(xv); and PARA 322 post.

2 For the meaning of 'mine' see PARA 5 ante.

3 See the Settled Land Act 1925 s 20 (as amended), ss 41, 42, 45, 46, 117(1)(xv); and SETTLEMENTS. The tenant for life could deal with the surface and the minerals separately: see s 50. As to the powers of a tenant for life generally see SETTLEMENTS.

4 As to the phasing out of strict settlements and the introduction of the 'trust of land' see the Trusts of Land and Appointment of Trustees Act 1996 s 2(1); and PARA 285 note 2 ante.

5 For the meaning of 'trustees of land' see PARA 285 note 2 ante.

6 Trusts of Land and Appointment of Trustees Act 1996 s 6(1).

7 For these purposes 'beneficiary', in relation to a trust, means any person who under the trust has an interest in property subject to the trust (including a person who has such an interest as a trustee or a personal representative) (ibid s 22(1)); references to a beneficiary who is beneficially entitled do not include a beneficiary who has an interest in property subject to the trust only by reason of being a trustee or personal representative (s 22(2)); and a person who is a beneficiary only by reason of being an annuitant is not to be regarded as entitled to an interest in possession in land subject to the trust (s 22(3)).

8 Ibid s 9(1). As to the functions of trustees of land and their powers of delegation see ss 6, 8-11 (as amended); and REAL PROPERTY. As to the powers of a beneficiary under a trust of land generally see SETTLEMENTS.

9 See REAL PROPERTY; TRUSTS.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(1) POWERS OF DISPOSITION/(ii) Powers of Leasing/293. Trustees and personal representatives.

293. Trustees and personal representatives.

In certain cases trustees and personal representatives could have exercised the powers to grant mining leases¹ conferred on a tenant for life² under the Settled Land Act 1925³. Trustees authorised by statute to grant mining leases of separate properties, held upon different trusts, may not grant one lease of both properties⁴.

As from 1 January 1997 no new settlements can be created under the Settled Land Act 1925⁵.

1 For the meaning of 'mining lease' see PARA 292 note 1 ante.

2 As to the statutory powers of leasing see PARA 292 ante.

3 See the Settled Land Act 1925 ss 23(1), 26(1); the Law of Property Act 1925 s 28(1) (repealed); the Administration of Estates Act 1925 s 39(1) (as amended); and EXECUTORS AND ADMINISTRATORS; SETTLEMENTS; TRUSTS. Before 1926, trustees had no power to grant mining leases unless expressly authorised to do so, and apart from statute, the court could not assist them (even where the legal estate was vested in such trustees and such leases would be beneficial to the beneficiaries): see *Wood v Patten* (1847) 10 Beav 541. See also TRUSTS. As to express powers of leasing see generally POWERS. Accordingly, prima facie, a trust for sale did not authorise trustees to grant mining leases (*Jervoise v Clarke* (1821) Madd & G 96); nor did a general power to lease authorise the grant of a lease of unopened mines (*Clegg v Rowland* (1866) LR 2 Eq 160; *Re Baskerville*, *Baskerville v Baskerville* [1910] 2 Ch 329; *Re Harter*, *Harter v Harter* [1913] WN 104), although it was not necessary that a power to authorise such a grant should refer expressly to unopened mines (*Daly v Beckett* (1857) 24 Beav 114; *Re Barker*, *Wallis v Barker* (1903) 88 LT 685). It was a question of construction in each case: see *Leigh v Earl of Balcarres* (1848) 6 CB 847.

4 *Tolson v Sheard* (1877) 5 ChD 19, CA.

5 As to the phasing out of strict settlements and the introduction of the 'trust of land' see the Trusts of Land and Appointment of Trustees Act 1996 s 2(1); and PARA 285 note 2 ante. As to the statutory powers of leasing see PARA 292 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(1) POWERS OF DISPOSITION/(ii) Powers of Leasing/294. University and college estates.

294. University and college estates.

The universities of Oxford, Cambridge and Durham, and the colleges or halls in them, and the colleges of Winchester and Eton¹, may lease any land² belonging to the university or college in question, or any easement, right, or privilege of any kind, over or in relation to the land, for any purpose whatever, whether involving waste or not, for any term not exceeding, in the case of a mining lease, 60 years³. Any such lease must conform to conditions similar to those imposed in respect of mining leases granted by a tenant for life⁴, and the leasing power extends to the making of a lease for giving effect to a covenant for renewal, and a lease for confirming a previous void or voidable lease⁵. The provisions as to rent are identical in effect with those applicable to mining leases granted under the powers of the Settled Land Act 1925⁶ by tenants for life⁷. Where a lease for a longer term or on other conditions is necessary by reason of local conditions, such a lease may be granted with ministerial authority⁸. Powers of accepting surrenders in respect of mines and minerals are also exercisable subject to conditions similar to those affecting tenants for life⁹. The surface and minerals may be dealt with separately¹⁰.

As from 1 January 1997 no new settlements can be created under the Settled Land Act 1925¹¹.

1 See the Universities and College Estates Act 1925 s 1; and EDUCATION vol 15(2) (2006 Reissue) PARA 1379.

2 'Land' includes, inter alia, mines and minerals, whether or not held apart from the surface: see *ibid* s 43(iv) (as amended); and EDUCATION vol 15(2) (2006 Reissue) PARA 1379.

3 See *ibid* s 6(ii).

4 As to regulations respecting leases generally see *ibid* s 7 (as amended); cf the Settled Land Act 1925 s 42; and SETTLEMENTS.

5 See the Universities and College Estates Act 1925 s 8.

6 As to regulations respecting mining leases see the Settled Land Act 1925 s 45; and SETTLEMENTS.

7 As to regulations respecting mining leases see the Universities and College Estates Act 1925 s 10 (amended by the Universities and College Estates Act 1925 (Amendment) Regulations 1978, SI 1978/443, reg 2, Schedule para 1).

8 See *ibid* s 11. The Universities and College Estates Act 1925 refers to the Minister of Agriculture, Fisheries and Food, but the Ministry of Agriculture, Fisheries and Food has been dissolved and the minister's functions have been transferred to the Secretary of State for Environment, Food and Rural Affairs (see the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794; and PARA 4 ante).

9 See the Universities and College Estates Act 1925 s 13 (amended by the Universities and College Estates Act 1964 ss 2-3, Sch 1 Pt II para 4). Cf the Settled Land Act 1925 s 52; and SETTLEMENTS. As to the meaning of 'mines and minerals' see PARA 12 note 26 ante.

10 See the Universities and College Estates Act 1925 s 22. The Act also contains provisions similar to those affecting tenants for life as to the power to compromise claims (s 17 (as amended)), the power to vary leases (s 18), and the power to grant options (s 23 (as amended)). As to the application of mineral rents see s 12. As to the powers of tenants for life see SETTLEMENTS.

11 As to the phasing out of strict settlements and the introduction of the 'trust of land' see the Trusts of Land and Appointment of Trustees Act 1996 s 2(1); and PARA 285 note 2 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(1) POWERS OF DISPOSITION/(ii) Powers of Leasing/295. Land held on charitable, ecclesiastical or public trusts.

295. Land held on charitable, ecclesiastical or public trusts.

Trustees in whom land is vested on charitable, ecclesiastical or public trusts have, in reference to that land, the powers of leasing conferred by the Trusts of Land and Appointment of Trustees Act 1996¹ subject to statutory controls over the trustees².

1 See SETTLEMENTS; TRUSTS. As to powers of leasing by charities generally see CHARITIES vol 8 (2010) PARA 395 et seq. Prior to 1 January 1997, trustees in whom land is vested on charitable, ecclesiastical or public trusts had, in reference to that land, the powers of leasing conferred by the Settled Land Act 1925 upon a tenant for life: see s 29(1) (repealed). Those powers were only exercisable subject to such consents or orders, if any, being obtained as would, if the Act had not been passed, have been requisite if the lease had been made under an express power conferred by the instrument creating the trust: see s 29(2) (repealed). Before the disposition of charity land was regulated by statute, trustees of charity land had a general power of granting leases of such land, governed by the same general principles as applied to sales: see eg *A-G v Warren* (1818) 2 Swan 291 at 302-303 per Plumer MR. It is not clear whether the statutory powers superseded this general power, but it was not safe for purchasers to rely on the general power as authorising a transaction: see CHARITIES vol 8 (2010) PARA 402 et seq.

2 For example, as to the restrictions on dispositions of charity land see the Charities Act 1993 s 36; and CHARITIES vol 8 (2010) PARA 395 et seq.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(1) POWERS OF DISPOSITION/(ii) Powers of Leasing/296. The Crown and the Duchy of Cornwall.

296. The Crown and the Duchy of Cornwall.

The Crown Estate Commissioners¹ have powers of leasing mines and minerals belonging to the Crown². Subject to certain formalities, mines and minerals which form part of the private estates of the Crown may be leased as freely as by an ordinary subject³.

The Duke of Cornwall may grant a mining lease of Duchy land for any term of years⁴.

¹ As to the constitution, composition and functions of the Crown Estate Commissioners see the Crown Estate Act 1961 s 1; and CROWN PROPERTY vol 12(1) (Reissue) PARA 278 et seq.

² As to their powers of leasing generally see CROWN PROPERTY. As to the meaning of 'mines and minerals' see PARA 12 ante; and for the meaning of 'mine' see PARA 5 ante. The Commissioners must not grant a lease of land of the Crown Estate, or of any right or privilege over or in relation to any such land, for a term ending more than 150 years from the date of the lease, and every such lease granted by them must be made to take effect in possession not later than 12 months after its date or in reversion after an existing lease having at that date not more than 21 years to run: *ibid* s 3(2) (amended by the Miscellaneous Financial Provisions Act 1983 s 5). See generally CROWN PROPERTY.

³ As to the sovereign's right to dispose of private estates see generally CROWN PROPERTY.

⁴ See the Duchy of Cornwall Management Act 1863 s 21 (amended by the Duchy of Cornwall Management Act 1982 s 5(a)); the Duchy of Cornwall Management Act 1863 s 37; and CROWN PROPERTY vol 12(1) (Reissue) PARA 332 et seq. When there is no Duke of Cornwall, the Duchy is vested in the Sovereign: see generally CROWN PROPERTY.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(i) Contracts for Sale/297. General rules and requirements.

(2) DISPOSITIONS OTHER THAN LEASES

(i) Contracts for Sale

297. General rules and requirements.

The rules of law applicable to contracts for the sale or demise of land¹ apply generally to contracts concerning mines, quarries and unsevered minerals, for the mines and minerals are part and parcel of the land².

The statutory requirements³, relating to contracts for the sale or other disposition of an interest in land⁴ apply equally to a contract for the sale of a mine or quarry, or of a share of a mine or quarry⁵, or for a right to enter upon land and dig for and take minerals⁶, but not to an agreement relating to a mine unless it concerns an interest in the mine itself⁷, or, as a rule, to a partnership agreement⁸, unless it amounts to a contract for the sale of an interest in the land⁹.

1 As to the rules of law applicable to contracts for the sale or demise of land generally see LANDLORD AND TENANT; SALE OF LAND.

2 See *Wilkinson v Proud* (1843) 11 M & W 33; *Williamson v Wootton* (1855) 3 Drew 210 at 213 per Kindersley V-C; *Kerr v Pawson* (1858) 25 Beav 394 at 406 per Romilly MR. As to the registration of estate contracts see LAND CHARGES; LAND REGISTRATION. For the meaning of 'mine' see PARA 5 ante; and for the meaning of 'minerals' see PARA 12 ante.

3 See the Law of Property (Miscellaneous Provisions) Act 1989 s 2 (as amended), which requires contracts for the sale or other disposition of an interest in land to be made in writing and signed by all the parties to the contract: see SALE OF LAND.

4 See *ibid* s 2 (as amended); *McCausland v Duncan Lawrie Ltd* [1996] 4 All ER 995, [1997] 1 WLR 38, CA; and CONTRACT; SALE OF LAND.

5 *Boyce v Green* (1826) Batt 608.

6 *Smart v Jones* (1864) 15 CBNS 717.

7 *Cheadle v Proctor* (1868) 19 LT 289.

8 *Forster v Hale* (1800) 5 Ves 308 at 314 per Lord Loughborough LC; and see PARTNERSHIP.

9 *Caddick v Skidmore* (1857) 2 De G & J 52.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(i) Contracts for Sale/298. Contracts passing mines and minerals.

298. Contracts passing mines and minerals.

A contract for the sale of freehold land includes the mines and minerals under that land unless expressly excepted¹; but if land is taken compulsorily by a railway authority², or for waterworks and sewers³, the mines and minerals are not acquired unless expressly purchased and conveyed. A railway authority need not acquire the surface and minerals at the same time⁴.

1 *Williamson v Wootton* (1855) 3 Drew 210 at 213 per Kindersley V-C; *Hayford v Criddle* (1855) 22 Beav 477 at 480 per Romilly MR; *Kerr v Pawson* (1858) 25 Beav 394 at 406 per Romilly MR. As to the meaning of 'mines and minerals' see PARA 12 ante; and for the meaning of 'mine' see PARA 5 ante. As to the presumption arising from surface ownership see PARA 20 ante; and SALE OF LAND.

2 As to the working of mines lying under or near a railway see the Railways Clauses Consolidation Act 1845 ss 77-85 (ss 78, 84 as amended); *Re Metropolitan District Rly Co and Cotton's Trustees* (1881) 45 LT 103, CA. Minerals do not impliedly pass with the surface: see PARA 144 ante. A mining code based on that applicable to railways under the Railways Clauses Consolidation Act 1845 ss 77-85 (ss 78, 84 as amended) may be incorporated in a compulsory purchase order: see the Acquisition of Land Act 1981 s 3, Sch 2 (as amended); and PARA 137 ante. The railways code is also incorporated under the Transport and Works Act 1992 by virtue of the Transport and Works (Model Clauses for Railways and Tramways) Order 1992, SI 1992/3270: see PARA 137 ante; and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARAS 305-306, 310. As to the incorporation of the Railways Clauses Consolidation Act 1845 in local acts and compulsory purchase orders of provisions excluding minerals see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 515.

3 See the Water Industry Act 1991 s 188, Sch 14; the Water Resources Act 1991 s 182 (as amended), Sch 23 (as amended); and WATER AND WATERWAYS vol 101 (2009) PARA 492 et seq.

In the case of the compulsory acquisition of land by virtue of the Water Industry Act 1991 or the Water Resources Act 1991 (see WATER AND WATERWAYS vol 101 (2009) PARA 453-454), the provisions of the Water Industry Act 1991 Sch 14 or, as the case may be, the Water Resources Act 1991 Sch 23 (as amended), have effect instead of the Acquisition of Land Act 1981 s 3, Sch 2 (as amended): see the Water Industry Act 1991 s 188; and the Water Resources Act 1991 s 182 (amended by the Environment Act 1995 s 120(1), Sch 22 para 128).

4 *Errington v Metropolitan District Rly Co* (1882) 19 ChD 559, CA.

UPDATE

298 Contracts passing mines and minerals

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 2--SI 1992/3270 replaced: Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954 (amended by SI 2008/2831, SI 2009/1307).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(i) Contracts for Sale/299. Effect of absence of title to minerals.

299. Effect of absence of title to minerals.

If the vendor under a contract for the sale of freehold land has no title to the mines and minerals¹, he cannot enforce the contract if he has agreed to show good title², even if he is willing to or the court could compensate the purchaser³. This is so even where no evidence is given of the existence in the land of minerals of any value⁴, for the objection to the title is valid unless it is shown that there is no subject matter for the reservation to act upon, or that all right to exercise it has ceased⁵. If the vendor cannot make a title by the date for completion he cannot maintain an action for damages for breach of contract, even where he has subsequently acquired the right to the minerals for a nominal sum⁶.

1 As to the meaning of 'mines and minerals' see PARA 12 ante; and for the meaning of 'mine' see PARA 5 ante.

2 *Upperton v Nickolson* (1871) 6 Ch App 436 (where land formerly copyhold); *Pretty v Solly* (1859) 26 Beav 606; *Bellamy v Debenham* [1891] 1 Ch 412, CA; and see *McGrory v Alderdale Estate Co Ltd* [1918] AC 503, HL.

3 *Re Hargreaves and Thompson's Contract* (1886) 32 ChD 454 at 455, CA; see *Re Davis and Cavey* (1888) 40 ChD 601; *Re Wilsons and Stevens' Contract* [1894] 3 Ch 546. As to compensation for failure to make title see PARA 301 post.

4 *Barton v Downes* (1842) Fl & K 505 at 506; *Martin v Cotter* (1846) 3 Jo & Lat 496, agreeing, at 509 per Sugden LC, with the law laid down in *Lyddall v Weston* (1739) 2 Atk 19 at 20 per Lord Hardwicke.

5 *Martin v Cotter* (1846) 3 Jo & Lat 496 at 509 per Sugden LC; *Ramsden v Hurst* (1858) 27 LJ Ch 482. As to cesser of the right to work minerals see PARAS 10, 32-33 ante; and *Seaman v Vawdrey* (1810) 16 Ves 390 at 392 per Grant MR.

6 *Bellamy v Debenham* [1891] 1 Ch 412, CA; and see *Brickles v Snell* [1916] 2 AC 599.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(i) Contracts for Sale/300. Effect of vendor's knowledge of absence of title.

300. Effect of vendor's knowledge of absence of title.

A vendor who contracts to sell land by a description which includes minerals¹, knowing that he has no title to them, cannot avoid the contract under a power to rescind if an objection to the title is insisted on which he is unable or, on the ground of expense, declines to remove or comply with; for the court will consider his conduct in applying the condition². A vendor of land sold as containing minerals has, however, been allowed to rescind where the title to minerals under part of the land has been the subject of an objection the removal of which would have involved a long and expensive inquiry³.

¹ For the meaning of 'minerals' see PARA 12 ante.

² *Re Jackson and Haden's Contract* [1906] 1 Ch 412, CA; and see *Procter v Pugh* [1921] 2 Ch 256, (1921) 127 LT 126; *Re Des Reaux and Setchfields's Contract* [1926] Ch 178, (1925) 134 LT 623; and SALE OF LAND.

³ See *Mawson v Fletcher* (1870) 6 Ch App 91, where the contract for sale included a condition that if any objection or requisition should be delivered and persisted in, the vendor should be at liberty to rescind the contract on returning to the purchaser his deposit, without interest or expenses.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(i) Contracts for Sale/301. Compensation for failure to make title.

301. Compensation for failure to make title.

If a vendor has no title to the mines and minerals¹, a purchaser of land may be entitled to compensation under a clause in the contract providing that errors in the particulars are to be the subject of compensation²; and compensation has been obtained by purchasers in cases in which a provision of the contract was not relied on³; but a purchaser cannot obtain compensation if he has gone into possession and has not objected to the title within the time named by the contract⁴. Compensation may be given to a purchaser by reason of misrepresentation on the vendor's part⁵.

1 As to the meaning of 'mines and minerals' see PARA 12 ante; and for the meaning of 'mine' see PARA 5 ante.

2 *Re Jackson and Haden's Contract* [1906] 1 Ch 412, CA (where the vendor had no right to rescind on the ground of an objection to the title under the contract); see *Baines v Tweddle* [1959] Ch 679, [1959] 2 All ER 724, CA; and SALE OF LAND.

3 *Seaman v Vawdrey* (1810) 16 Ves 390; *Ramsden v Hurst* (1858) 27 LJ Ch 482; cf *Smithson v Powell, Powell v Smithson* (1852) 20 LTOS 105; *Re Bunbury's Estate* (1867) 1 IR Eq 458.

4 *Smithson v Powell, Powell v Smithson* (1852) 20 LTOS 105 (where no compensation awarded).

5 *Powell v Elliot* (1875) 10 Ch App 424. As to misrepresentation see MISREPRESENTATION AND FRAUD.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(i) Contracts for Sale/302. Rights of purchaser taking with notice.

302. Rights of purchaser taking with notice.

Mining contracts, whether by way of sale or of demise, do not usually import any guarantee of the existence or value of minerals¹. If land is sold as containing minerals, and the purchaser enters into the contract with knowledge that the minerals have been partly worked, it is his business to ascertain the extent of the working². Further, when mines³ are not in the occupation of the vendor, a purchaser of land takes with notice of the rights of those in possession⁴, and if the contract is for the sale of what was formerly copyhold land, the purchaser cannot object to the title on the ground that the right to minerals is in the lord⁵; but it seems that notice that the land sold is enfranchised copyhold is not sufficient to affect a purchaser with notice that the vendor has no title to the mines and minerals⁶.

1 *Jefferys v Fairs* (1876) 4 ChD 448 at 452 per Bacon V-C. For the meaning of 'minerals' see PARA 12 ante.

2 *Colby v Gadsden* (1865) 34 Beav 416 at 421 per Romilly MR; and see *Jennings v Broughton* (1853) 5 De GM & G 126.

3 For the meaning of 'mine' see PARA 5 ante.

4 *Holmes v Powell* (1856) 8 De GM & G 572. As to the liability of registered land to overriding interests see the Land Registration Act 2002 ss 11, 12, 28, 29, Sch 1 paras 2, 7, 8, 9, Sch 3 paras 2, 7, 8, 9 in particular; and LAND REGISTRATION.

5 *Hayford v Criddle* (1855) 22 Beav 477 at 480 per Romilly MR. As to copyhold see CUSTOM AND USAGE.

6 See *Bellamy v Debenham* [1891] 1 Ch 412 at 420, CA, per Lindley LJ; and *Kerr v Pawson* (1858) 25 Beav 394. As to a sale of settled land comprising enfranchised copyholds see SETTLEMENTS. As to the lord's right to the minerals see CUSTOM AND USAGE; REAL PROPERTY. As to the meaning of 'mines and minerals' see PARA 12 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(i) Contracts for Sale/303. Implied terms of the contract of sale.

303. Implied terms of the contract of sale.

A contract for the sale or other disposition of an interest in land can only be made in writing and only by incorporating all the terms which the parties have expressly agreed in one document or, where contracts are exchanged, in each. The terms may be incorporated in a document either by being set out in it or by reference to some other document¹.

It appears that in a contract for a sale of mines² for working, time is of the essence of the contract even if not expressly stated to be so³. In the absence of express provision to the contrary, a purchaser of mines is entitled to the profits from the date on which he pays the purchase money⁴.

A purchaser who goes into possession and works a mine before conveyance may be ordered on interim application to pay the purchase money into court⁵.

1 See the Law of Property (Miscellaneous Provisions) Act 1989 s 2(1), (2); *McCausland v Duncan Lawrie Ltd* [1996] 4 All ER 995, [1997] 1 WLR 38, CA; and REAL PROPERTY.

2 For the meaning of 'mine' see PARA 5 ante.

3 *Green v Sevin* (1879) 13 ChD 589 at 594, obiter, per Fry J; and see *Macbryde v Weekes* (1856) 22 Beav 533. It seems that notice may be given fixing a reasonable time for completion if no time is named in the contract: *Macbryde v Weekes* supra.

4 See PARA 365 post. It was held in *Wren v Kirton* (1803) 8 Ves 502 and in *Williams v Attenborough* (1823) Turn & R 70 at 73 per Lord Eldon LC, that the purchaser was entitled to profits from the commencement of the month in which he paid the purchase money, but these decisions do not appear to be good law.

5 *Buck v Lodge* (1812) 18 Ves 450. As to how far taking possession is an acceptance by the purchaser of the vendor's title see SALE OF LAND.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(i) Contracts for Sale/304. Purchaser's duty of disclosure.

304. Purchaser's duty of disclosure.

A purchaser of land need not disclose to the vendor his knowledge of the existence¹ or value² of minerals³ in the land unless he is in a fiduciary position towards the vendor⁴. If, however, a purchaser has wrongfully worked minerals under the land he must disclose the working to the vendor before contracting to buy, failing which the vendor will be entitled to refuse to complete the contract⁵. Any attempt by the purchaser to mislead or hurry the vendor may be a ground for refusing specific performance of the contract⁶, or may give rise to a claim for damages⁷. It is uncertain whether a tenant for life buying from the trustees of the settlement was bound to make disclosure⁸.

As from 1 January 1997 no new settlements can be created under the Settled Land Act 1925⁹.

1 *Fox v Mackreth* (1788) 2 Bro CC 400 at 420 per Lord Thurlow LC; *Turner v Harvey* (1821) Jac 169 at 178 per Lord Eldon LC.

2 *Walters v Morgan* (1861) 3 De GF & J 718; *Phillips v Homfray, Fothergill v Phillips* (1871) 6 Ch App 770 at 779 per Lord Hatherley LC.

3 For the meaning of 'minerals' see PARA 12 ante.

4 *Luddy's Trustee v Peard* (1886) 33 ChD 500 at 520, obiter, per Kay J. A sale under an execution of an insolvent partner's share in a mine to his co-partners will be set aside if the purchasers have concealed matters affecting the value of the property: *Perens v Johnson, Johnson v Perens* (1857) 3 Sm & G 419.

5 *Phillips v Homfray, Fothergill v Phillips* (1871) 6 Ch App 770.

6 *Turner v Harvey* (1821) Jac 169 at 178 per Lord Eldon LC; *Walters v Morgan* (1861) 3 De GF & J 718 at 723 per Lord Campbell LC.

7 As to damages for misrepresentation see the Misrepresentation Act 1967 s 2; and MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 789 et seq.

8 *Dicconson v Talbot* (1870) 6 Ch App 32.

9 As to the phasing out of strict settlements and the introduction of the 'trust of land' see the Trusts of Land and Appointment of Trustees Act 1996 s 2(1); and PARA 285 note 2 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(i) Contracts for Sale/305. Specific performance.

305. Specific performance.

A contract for the sale or lease of a mine¹ will be specifically enforced, if fairly entered into, even if the mine is worthless, or on the ground of the purchaser's ignorance of mining matters, or hardship that might be caused to the purchaser², but the court will not order specific performance of a contract for the sale or lease of mineral property if its terms³ or the subject matter⁴ are insufficiently defined. However, a description is sufficient if the subject matter is ascertainable, even where the boundaries of the property are not defined in the contract⁵. If possession has been taken under the contract, a lesser certainty of description will suffice⁶.

The court will specifically enforce a contract to grant a wayleave⁷, but if the grant would be useless to the defendant⁸, or the contract has been entered into by the defendant under a material mistake⁹, the claimant will be left to his remedy in damages¹⁰.

1 For the meaning of 'mine' see PARA 5 ante.

2 *Haywood v Cope* (1858) 25 Beav 140; *Jefferys v Fairs* (1876) 4 Ch D 448. Pending the hearing of a claim for specific performance there is jurisdiction to restrain a defendant in possession from allowing the mine to be drowned out: *Strelley v Pearson* (1880) 15 ChD 113. As to the power in interim remedies to order the preservation of relevant property see CPR 25.1 (1)(c)(i), (d), (l). 25.3, *Practice Direction-Interim Injunctions* PD 25 paras 2.1-4.5. As to the remedy of specific performance generally see SPECIFIC PERFORMANCE.

3 *Williamson v Wootton* (1855) 3 Drew 210.

4 *Price v Griffith* (1851) 1 De GM & G 80; *Lancaster v De Trafford* (1862) 31 LJ Ch 554; *Davis v Shepherd* (1866) 1 Ch App 410; and see *Low Moor Co v Stanley Coal Co* (1875) 33 LT 436.

5 *Haywood v Cope* (1858) 25 Beav 140.

6 *Parker v Taswell* (1858) 2 De G & J 559 at 571 per Lord Chelmsford LC.

7 -- v *White* (circa 1709) 3 Swan 108n; *Ricketts v Bell* (1847) 1 De G & Sm 335.

8 -- v *White* (circa 1709) 3 Swan 108n.

9 As to what mistakes are material see MISTAKE.

10 *Ricketts v Bell* (1847) 1 De G & Sm 335.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(i) Contracts for Sale/306. Contracts not specifically enforceable.

306. Contracts not specifically enforceable.

The court will not normally grant specific performance of a contract to sell minerals to be obtained from a mine¹, for this is a contract for the sale of chattels² and would involve the superintendence by the court of the working of the mine³. Similarly, in the normal course the breach of a contract to sell chattels will not be restrained by mandatory injunction⁴. For the same reasons a contract to work a quarry will not be specifically enforced⁵.

The right to specific performance of a contract may be barred by laches⁶. Delay is not a bar while both parties are insisting on the performance of the contract⁷, but after they are at arm's length a short delay may be sufficient⁸. There is an expectation of the court for persons to be unusually vigilant and active in asserting any right to specific performance in matters relating to commodities fluctuating from day to day in market price⁹. The purchaser should give notice of repudiation and abandonment if he has been in possession of the mine and intends to rely on delay as a defence¹⁰.

Misrepresentation¹¹ or concealment¹² by the vendor may be a ground for refusing specific performance, but if the purchaser, with knowledge of the misrepresentation, gives notice to the vendor requiring him to complete, he cannot afterwards avail himself of this defence¹³.

1 *Pollard v Clayton* (1855) 1 K & J 462. As to specific performance of a contract see generally SPECIFIC PERFORMANCE. For the meaning of 'minerals' see PARA 12 ante; and for the meaning of 'mine' see PARA 5 ante.

2 *Fothergill v Rowland* (1873) LR 17 Eq 132 at 139 per Jessel MR.

3 *Pollard v Clayton* (1855) 1 K & J 462; and see *Wheatley v Westminster Brymbo Coal Co* (1869) LR 9 Eq 538 at 551, 552 per Malins V-C; *Co-operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd* [1998] AC 1, [1997] 3 All ER 297, HL (a covenant in a lease of retail premises to keep open for trade during the usual hours of business was not, other than in exceptional circumstances, specifically enforceable, since it was the settled practice of the court not to make an order requiring a person to carry on a business).

4 *Fothergill v Rowland* (1873) LR 17 Eq 132; and see CIVIL PROCEDURE vol 11 (2009) PARAS 346 et seq, 463, 465. See also *Co-operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd* [1998] AC 1, [1997] 3 All ER 297, HL.

5 *Booth v Pollard* (1840) 4 Y & C Ex 61.

6 *Walker v Jeffreys* (1842) 1 Hare 341; *Eads v Williams* (1854) 4 De GM & G 674 at 691 per Lord Cranworth LC; *Sharp v Wright* (1859) 28 Beav 150; *Huxham v Llewellyn* (1873) 21 WR 570; *Glasbrook v Richardson* (1874) 23 WR 51.

7 *Colby v Gadsden* (1865) 34 Beav 416 at 418 per Romilly MR.

8 *Huxham v Llewellyn* (1873) 21 WR 570; *Glasbrook v Richardson* (1874) 23 WR 51.

9 *Pollard v Clayton* (1855) 1 K & J 462.

10 *Haywood v Cope* (1858) 25 Beav 140 at 150 per Romilly MR.

11 *Higgins v Samels* (1862) 2 John & H 460; *Colby v Gadsden* (1867) 15 WR 1185. See also MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 785.

12 *Haywood v Cope* (1858) 25 Beav 140 at 147 per Romilly MR. As to setting aside the contract see PARA 307 post.

13 *Macbryde v Weekes* (1856) 22 Beav 533 at 538 per Romilly MR; and see *British and Commonwealth Holdings plc v Quadrex Holdings Inc* [1989] QB 842, [1989] 3 All ER 492, CA.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(i) Contracts for Sale/307. Fraud, misrepresentation and mistake.

307. Fraud, misrepresentation and mistake.

The contract will be set aside if induced by fraud¹ or material misrepresentation²; but if the purchaser has tested the accuracy of the vendor's statements he cannot avoid the contract³, and, even though induced by misrepresentation, a contract will not be set aside if the position of the parties has been so altered that they cannot be restored to their former position⁴. Furthermore, if the purchaser requires the vendor to complete he cannot then set up as a defence to a claim for specific performance a misrepresentation of the vendor of which he was aware at the time of giving notice⁵. In addition, or as an alternative, to the right to rescission, a purchaser who has been induced to enter into the contract as a result of fraud or material misrepresentation may be entitled to damages⁶.

Mutual mistake is a good ground for a claim for rescission of the contract⁷, but the mere existence of faults in the mine is not a good ground⁸.

The burden of proof in a claim for rescission of a contract relating to mines is on the party claiming it⁹, and he should institute proceedings at once, for his right to relief is quickly barred by laches¹⁰.

A receiver and manager of a colliery may be appointed until the hearing of a claim for rescission¹¹.

1 *Attwood v Small* (1838) 6 Cl & Fin 232, HL; *Phosphate Sewage Co v Hartmont* (1877) 5 ChD 394, CA; *Erlanger v New Sombrero Phosphate Co* (1878) 3 App Cas 1218, HL; applied in *O'Sullivan v Management Agency and Music Ltd* [1985] QB 428, [1985] 3 All ER 351, CA. When a mine is sold by the court the biddings will not be opened except on the ground of fraud or improper conduct in the management of the sale: see the Sale of Land by Auction Act 1867 s 7 (as amended); *Delves v Delves* (1875) LR 20 Eq 77. See further SALE OF LAND. For the meaning of 'mine' see PARA 5 ante.

2 *Jennings v Broughton* (1853) 17 Beav 234 at 238 per Romilly MR (affd (1854) 5 De GM & G 126); *Lagunas Nitrate Co v Lagunas Syndicate* [1899] 2 Ch 392, CA; applied in *O'Sullivan v Management Agency and Music Ltd* [1985] QB 428, [1985] 3 All ER 351, CA. See also MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 774 et seq.

3 *Attwood v Small* (1838) 6 Cl & Fin 232, HL; *Jennings v Broughton* (1853) 17 Beav 234 (affd (1854) 5 De GM & G 126); *Haywood v Cope* (1858) 25 Beav 140 at 148 per Romilly MR.

4 *Lagunas Nitrate Co v Lagunas Syndicate* [1899] 2 Ch 392 at 423, 433, CA, per Lindley MR; and see MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 831 et seq.

5 *Macbryde v Weekes* (1856) 22 Beav 533; and see *British and Commonwealth Holdings plc v Quadrex Holdings Inc* [1989] QB 842, [1989] 3 All ER 492, CA.

6 As to damages for misrepresentation see the Misrepresentation Act 1967 s 2; and MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 789 et seq.

7 *Davis v Shepherd* (1866) 1 Ch App 410 at 419 per Turner LJ; and see MISTAKE vol 77 (2010) PARA 52 et seq.

8 *Ridgway v Sneyd* (1854) Kay 627 at 635 per Page Wood V-C. It has been suggested that an exaggerated account of a mine's prospects is not a good ground for rescission (see *Jennings v Broughton* (1853) 17 Beav 234; affd (1854) 5 De GM & G 126), but it seems that this may no longer be the case (see MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARAS 715-716).

9 *Jennings v Broughton* (1853) 17 Beav 234; affd (1854) 5 De GM & G 126.

10 *Ernest v Vivian* (1863) 33 LJ Ch 513; *Erlanger v New Sombrero Phosphate Co* (1878) 3 App Cas 1218, HL; *Lagunas Nitrate Co v Lagunas Syndicate* [1899] 2 Ch 392, CA. As to the defence of laches see EQUITY.

11 *Gibbs v David* (1875) LR 20 Eq 373.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(ii) Conveyances on Sale; Mortgages/308. Effect of conveyance of land on ownership of minerals.

(ii) Conveyances on Sale; Mortgages

308. Effect of conveyance of land on ownership of minerals.

All mines and minerals¹, whether their ownership is severed from the ownership of the surface of the land or not, lie in grant, and are conveyed by deed². Unless they are expressly excepted or circumstances exist to rebut the presumption, a conveyance of land passes the mines and minerals in it³. If, however, the ownership of the mines and minerals has been previously severed from the ownership of the land, the title to them remains unaffected by such a conveyance⁴. In various cases conveyances of land taken in the exercise of compulsory powers⁵ are deemed not to include the minerals, except such parts of them as are necessary to be dug or carried away or used in the construction of the works, unless the minerals are expressly conveyed⁶. In such cases, however, the purchaser acquires the whole soil except the minerals⁷.

A conveyance of a manor passes mines, minerals and quarries reputed or known as part, parcel or member of the manor⁸. A conveyance by the Crown as lord of a manor of minerals found within the commons, wastes or marshes within the manor passes minerals under the foreshore of a river⁹.

A conveyance of land adjoining a railway or a canal does not pass any part of the minerals under the railway¹⁰ or canal, even if those minerals are vested in the person conveying as the presumption of ownership *usque ad medium filum viae* does not apply¹¹.

1 As to the meaning of 'mines and minerals' see PARA 12 note 26 ante.

2 See the Law of Property Act 1925 ss 51(1), 52(1), 205(1)(ix) (as amended); and DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 14. Prior to the passing of the Real Property Act 1845 ss 2, 3 (both repealed), open mines were corporeal hereditaments and lay in livery: *Shep Touch* (8 Edn) 96. There was some doubt whether unopened mines were corporeal or incorporeal hereditaments: *Wilkinson v Proud* (1843) 11 M & W 33 at 35; *Carlyon v Lovering* (1857) 1 H & N 784 at 799 per Watson B. As to the registration of title to minerals see PARA 319 post.

3 *Harris v Ryding* (1839) 5 M & W 60 at 73 per Alderson B; *Spoor v Green* (1874) LR 9 Exch 99 at 107 per Cleasby B; *Earl of Jersey v Neath Poor Law Union Guardians* (1889) 22 QBD 555 at 558, CA, per Lord Esher MR.

4 *Denison v Holiday* (1858) 3 H & N 670.

5 For this purpose a voluntary conveyance made in contemplation of compulsory powers is treated as indistinguishable from a conveyance taken in exercise of such powers: *Elliot v North Eastern Rly Co* (1863) 10 HL Cas 333 at 352 per Lord Chelmsford. See PARA 139 ante.

6 See the Railways Clauses Consolidation Act 1845 ss 77-85 (ss 78, 84 as amended); the Water Industry Act 1991 s 188, Sch 14; the Water Resources Act 1991 s 182 (as amended), Sch 23 (as amended); WATER AND WATERWAYS vol 101 (2009) PARA 492 et seq; and cf the Acquisition of Land Act 1981 s 3, Sch 2 para 2(2); and see PARA 144 ante. The purchaser may become entitled to a conveyance of the minerals if they are expressly named in the notice to treat: *Errington v Metropolitan District Rly Co* (1882) 19 ChD 559 at 569, CA, per Jessel MR, and at 573 per Brett LJ. As to the construction of a conveyance to a railway authority from which mines and minerals are excepted by the operation of the Railways Clauses Consolidation Act 1845 s 77 see *Midland Rly Co and Kettering, Thrapston and Huntington Rly Co v Robinson* (1889) 15 App Cas 19, HL.

7 *Pountney v Clayton* (1883) 11 QBD 820 at 833, CA, per Brett MR; *Ruabon Brick and Terra Cotta Co v Great Western Rly Co* [1893] 1 Ch 427 at 457, CA, per Bowen LJ; *Re Lord Gerard and London and North Western Rly Co* [1895] 1 QB 459, CA.

8 See the Law of Property Act 1925 s 62(3); and CUSTOM AND USAGE. As to the effect of general words apart from the Act see *A-G v Ewelme Hospital* (1853) 17 Beav 366 at 386 per Romilly MR. Mines severed from a manor cannot be reunited so as to become parcel of it: see *Revell v Jodrell* (1788) 2 Term Rep 415 at 419, 424.

9 *A-G v Hanmer* (1858) 27 LJ Ch 837 (on appeal (1859) 4 De G & J 205); and see *Ecroyd v Coulthard* [1898] 2 Ch 358 at 367, CA, per Lindley MR; and CUSTOM AND USAGE.

10 *Thompson v Hickman* [1907] 1 Ch 550.

11 *Chamber Colliery Co Ltd v Rochdale Canal Co* [1895] AC 564, HL; and see PARA 24 ante.

UPDATE

308 Effect of conveyance of land on ownership of minerals

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(ii) Conveyances on Sale; Mortgages/309. Conveyance of land excepting the minerals.

309. Conveyance of land excepting the minerals.

Mines and minerals¹ may be excepted from a conveyance of land, and are properly the subject of an exception and not of a reservation². Consequently, as the property in the excepted mines and minerals remains in the same ownership³, words of limitation were never necessary⁴. It is a question of construction whether in any particular case the words used amount to an exception of mines or minerals⁵ or to a regrant of a right to work⁶. The exception of minerals out of land conveyed, which is of no advantage unless a right to work them is added, necessarily implies the existence of a power to recover the minerals and of the right of working⁷. Nevertheless, if land is sold for a specific purpose and minerals are expressly excepted in the conveyance, the minerals may still be removed by the purchaser so far as may be necessary to enable the land to be employed for the purpose for which it was sold⁸.

1 As to the meaning of 'mines and minerals' see PARA 12 ante; and for the meaning of 'mine' see PARA 5 ante.

2 *Earl of Cardigan v Armitage* (1823) 2 B & C 197; *Doe d Douglas v Lock* (1835) 2 Ad & El 705; *Proud v Bates* (1865) 34 LJ Ch 406; *Duke of Hamilton v Graham* (1871) LR 2 Sc & Div 166; *Eardley v Granville* (1876) 3 ChD 826 at 834 per Jessel MR; *Batten Pooll v Kennedy* [1907] 1 Ch 256. As to the distinction between exceptions and reservations and the effect of an exception of minerals see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARAS 237-238.

3 See *Fernando v De Silva* (1912) 107 LT 670 at 671, PC.

4 See *Shep Touch* (8 Edn) 100. As to conveyances after 1925 see the Law of Property Act 1925 s 60(1).

5 *Duke of Hamilton v Dunlop* (1885) 10 App Cas 813, HL.

6 *Duke of Sutherland v Heathcote* [1892] 1 Ch 475, CA; *Chetham v Williamson* (1804) 4 East 469; *Lord Mountjoy and Earl of Huntington's Case* (1583) Godb 17.

7 *Borys v Canadian Pacific Rly Co* [1953] AC 217 at 227, 228, 232, [1953] 1 All ER 451 at 457-458, 460, PC; *Rowbotham v Wilson* (1860) 8 HL Cas 348 at 360 per Lord Wensleydale; *Ramsay v Blair* (1876) 1 App Cas 701 at 705, HL, per Lord Hatherley. As to reservations see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 239.

8 *Robinson v Milne* (1884) 53 LJ Ch 1070. See also *Earl of Jersey v Neath Poor Law Union Guardians* (1889) 22 QBD 555, CA; *Glasgow Corp v Farie* (1888) 13 App Cas 657, HL.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(ii) Conveyances on Sale; Mortgages/310. Effect of covenants in conveyance.

310. Effect of covenants in conveyance.

Where a conveyance contained a covenant to pay, for all coal found under certain land, £40 per acre, and to pay a yearly sum of £40 until the total amount was paid, 'found' was construed to mean 'ascertained to be', and the finding of coal was held not to be a condition precedent to the payment¹.

A covenant for quiet enjoyment contained in a conveyance of land not excepting mines and minerals² is not broken if the surface of the land subsides owing to the minerals having been worked out before the date of the grant³.

A rentcharge reserved in respect of minerals raised from property at any time is not void as a perpetuity⁴.

1 *Jowett v Spencer* (1847) 1 Exch 647.

2 As to the meaning of 'mines and minerals' see PARA 12 ante; and for the meaning of 'mine' see PARA 5 ante.

3 *Spoor v Green* (1874) LR 9 Exch 99. A covenant for quiet enjoyment contained in a grant of land excepting the minerals with power to work is broken if the surface of the land subsides owing to workings subsequent to the grant, under a lease giving power to let down the surface, made before the grant: *Taylor v Shafto* (1867) 8 B & S 228, Ex Ch. See also *Dennett v Atherton* (1872) LR 7 QB 316, Ex Ch; *Re Griffiths*, *Griffiths v Riggs* (1917) 61 Sol Jo 268. As to the operation of this covenant see generally LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 508 et seq; SALE OF LAND. As to subsidence damage see PARA 184 et seq ante.

4 *Morgan v Davey* (1883) Cab & El 114; and see PERPETUITIES AND ACCUMULATIONS vol 35 (Reissue) PARA 1006.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(ii) Conveyances on Sale; Mortgages/311. Mortgages.

311. Mortgages.

Mortgages of mineral property are subject to the general law of mortgage, which is dealt with elsewhere in this work¹. A mortgage of such property usually contains special provisions², and the mortgagee's power of securing the appointment of a manager or receiver is peculiarly appropriate to this class of security³.

1 As to the law of mortgage see MORTGAGE vol 77 (2010) PARA 101 et seq.

2 Eg a power in the mortgagee to work the mine in case of default. As to the provisions usually included in mortgages of mineral property see MORTGAGE vol 77 (2010) PARA 206.

3 See MORTGAGE vol 77 (2010) PARA 101 et seq; RECEIVERS.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(iii) Enfranchisement and Inclosure/312. Enfranchisement.

(iii) Enfranchisement and Inclosure

312. Enfranchisement.

In the case of a common law enfranchisement¹, the mines and minerals², unless expressly excepted, passed to the tenant as part of the freehold³. In the case of an enfranchisement under the Copyhold Act 1894⁴, the rights of the lord or tenant in any mines or minerals in or under the enfranchised land were not affected by the enfranchisement unless with the express consent in writing of the lord or tenant entitled to them⁵; and the enfranchisement effected by the Law of Property Act 1922⁶ did not affect the lord's or tenant's rights to mines and minerals or rights of working them⁷.

1 Prior to 1926 enfranchisement could be effected both at common law and under a number of statutes repealed and consolidated by the Copyhold Act 1894 (itself repealed by the Statute Law (Repeals) Act 1969); see REAL PROPERTY. As to the right to work coal in former copyhold land see PARA 400 et seq post.

2 As to the ownership of mines and minerals in or under manorial land see CUSTOM AND USAGE. As to the meaning of 'mines and minerals' see PARA 12 ante; and for the meaning of 'mine' see PARA 5 ante.

3 See Scriven on Copyholds (7th Edn) 306-307.

4 This Act was repealed by the Statute Law (Repeals) Act 1969.

5 Copyhold Act 1894 s 23(1) (repealed).

6 As to the enfranchisement of copyholds see the Law of Property Act 1922 s 128, Sch 12 (both repealed); and REAL PROPERTY.

7 Ibid s 128(2), Sch 12 para 5 (both repealed).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(iii) Enfranchisement and Inclosure/313. General effect of inclosure.

313. General effect of inclosure.

The minerals¹ under the waste of a manor are the property of the lord by virtue of his ownership of the soil; but his power of dealing with them is restricted by the rights enjoyed by the commoners over the surface². The commoners' rights are extinguished by inclosure, and subject to any limitations resulting from the terms of inclosure, the lord may then sell, lease or deal with the minerals as he pleases³.

1 For the meaning of 'minerals' see PARA 12 ante.

2 See COMMONS vol 13 (2009) PARA 565 et seq; CUSTOM AND USAGE.

3 As to inclosure generally see COMMONS vol 13 (2009) PARA 418 et seq. This is subject to the statutory vesting of unworked coal in the Coal Authority (see PARAS 3, 67 ante). Coal-mining operations are required to be licensed under the Coal Industry Act 1994 Pt II (ss 35-36) (as amended): see PARA 91 et seq ante. For the meaning of 'coal-mining operations' see PARA 50 note 10 ante. As to the Coal Authority see PARA 52 et seq ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(iii) Enfranchisement and Inclosure/314. Inclosure by the lord.

314. Inclosure by the lord.

Under the Commons Act 1285¹, but subject to the necessity of giving certain notices² and obtaining the consent of the Secretary of State³, the lord, as owner of the soil⁴, may inclose as against common of pasture; but, except by virtue of a special custom⁵, which to be reasonable must involve leaving a sufficiency for the commoners⁶, he may not inclose against common of turbary or estovers⁷, or a right to dig sand or gravel⁸ or to get stone⁹, unless the place inclosed is such that the right of the commoner is incapable of exercise there¹⁰.

1 See COMMONS.

2 See the Commons Act 1876 s 31.

3 See the Law of Commons Amendment Act 1893 s 2. This provision refers to the Board of Agriculture, but its functions have been transferred to the Secretary of State (see PARA 4 ante).

4 *Folkard v Hemmett* (1776) 5 Term Rep 417n.

5 *Arlett v Ellis* (1827) 7 B & C 346; *Lascelles v Lord Onslow* (1877) 2 QBD 433, DC; and see COMMONS vol 13 (2009) PARAS 562, 567, 569.

6 *Lascelles v Lord Onslow* (1877) 2 QBD 433, DC; and see *Bateson v Green* (1793) 5 Term Rep 411; *Arlett v Ellis* (1827) 7 B & C 346 at 369 per Bayley J.

7 *Lascelles v Lord Onslow* (1877) 2 QBD 433, DC; *Duberley v Page* (1788) 2 Term Rep 391; *Grant v Gunner* (1809) 1 Taunt 435. As to common of turbary and common of estovers see COMMONS vol 13 (2009) PARAS 457-460.

8 *Duberley v Page* (1788) 2 Term Rep 391.

9 *Heath v Deane* [1905] 2 Ch 86 at 93 per Joyce J.

10 *Peardon v Underhill* (1850) 16 QB 120. As to these restrictions on inclosure generally and the restrictions contained in the Law of Property Act 1925 s 194 (as amended) see COMMONS vol 13 (2009) PARA 568.

UPDATE

314 Inclosure by the lord

TEXT AND NOTES--All Acts cited repealed: Commons Act 2006 ss 47(1), 49(1), Sch 6 Pts 2, 3.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(iii) Enfranchisement and Inclosure/315. Inclosure under private Acts.

315. Inclosure under private Acts.

As the whole of a waste could not generally be inclosed¹, and the usual statutory procedure is inapplicable to common fields, recourse was formerly had for that purpose to private Acts of Parliament under which the land to be inclosed was allotted to the persons having interests in the land in severalty. Under such Acts, in the absence of provisions as to the mines and minerals, these prima facie pass to the allottees as part of the soil². The mines and minerals may, however, be reserved to the lord either expressly³ or by implication⁴. Whether any and what minerals⁵, under what land⁶ and with what powers of working⁷ are reserved are questions depending for their solution upon the true construction of the particular Act under which the inclosure is made.

¹ le under the statutes referred to in PARA 314 ante.

² *Townley v Gibson* (1788) 2 Term Rep 701, where an exception of royalties and manorial rights was held insufficient to prevent the minerals passing to the allottees. As to the meaning of 'mines and minerals' see PARA 12 ante; and for the meaning of 'mine' see PARA 5 ante.

³ See eg the Acts referred to in *Ewart v Graham* (1859) 7 HL Cas 331; *Robinson v Wray* (1866) LR 1 CP 490; *Butterknowle Colliery Co Ltd v Bishop Auckland Industrial Co-operative Co* [1906] AC 305, HL.

⁴ *Micklethwait v Winter* (1851) 6 Exch 644.

⁵ As to the meaning of an exception of mines and minerals in an Inclosure Act see *Earl of Rosse v Wainman* (1845) 14 M & W 859 (affd (1848) 2 Exch 800); *Micklethwait v Winter* (1851) 6 Exch 644; *A-G v Welsh Granite Co* (1887) 35 WR 617, CA; cf *North British Rly Co v Budhill Coal and Sandstone Co* [1910] AC 116, HL; *Thomson v St Catharine's College, Cambridge* [1919] AC 468, HL (overruling (on the construction of the same Act) *Master and Fellows of St Catharine's College, Cambridge v Greensmith* [1912] 2 Ch 280; and *St Catharine's College, Cambridge v Rosse* [1916] 1 Ch 73, CA); and see PARA 21 ante.

⁶ *Pretty v Solly* (1859) 26 Beav 606; *Wakefield v Duke of Buccleuch* (1867) LR 4 Eq 613 (affd (1870) LR 4 HL 377) (mines under allotments).

⁷ *Midgley v Richardson* (1845) 14 M & W 595; *Bowes v Lord Ravensworth* (1855) 15 CB 512; *Hayles v Pease & Partners Ltd* [1899] 1 Ch 567.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(iii) Enfranchisement and Inclosure/316. Inclosure by the Secretary of State.

316. Inclosure by the Secretary of State.

An application to the Secretary of State¹ for a provisional order for the inclosure or regulation of a common² comprised a statement as to the mines³, minerals⁴, and valuable strata, if any, under the common⁵. The provisional order itself, among other matters relating to rights in the soil and minerals⁶, contained provisions as to entry on the surface of land allotted for the purpose of working, and as to compensation for surface damage⁷ where the minerals were reserved to the lord⁸. If mineral property or other rights are vested in persons other than the lord of the manor and are likely to be affected by the order, such provisions and reservations as are required to be inserted by the Inclosure Acts 1845 to 1868 or as appear to the Secretary of State proper must be inserted⁹.

If the provisional order stated that the lord's right and interest had been estimated exclusively of his right and interest in the mines, minerals, stone and other substrata, he was entitled, on written request, to have reserved or awarded to him reasonable rights of working, which could be awarded either subject or not to compensation for damage occasioned to the surface¹⁰. The rights of working could be made exercisable in respect of minerals belonging to the lord situated under land other than the land allotted, whether or not within the manor¹¹.

1 As to the Secretary of State see PARA 4 ante.

2 It is considered that the Inclosure Act 1845 and its amending Acts, under which such a provisional order may be made, may be regarded as obsolete, but inclosure under the Acts is discussed briefly in view of its possible effect on existing titles or on disputed registrations under the Commons Registration Act 1965. See further COMMONS.

3 For the meaning of 'mine' see PARA 5 ante.

4 For the meaning of 'minerals' see PARA 12 ante.

5 See the Commons Act 1876 s 10 (as amended). As to the procedure for inclosure and regulation see COMMONS vol 13 (2009) PARA 586 et seq.

6 See COMMONS vol 13 (2009) PARA 465 et seq.

7 See *Allaway v Wagstaff* (1859) 4 H & N 681, decided on the construction of the Dean Forest (Mines) Act 1838 s 68 (as amended). As to mining and quarrying in Gloucestershire see PARA 608 et seq post.

8 As to provisional orders to specify the rights reserved as to mines etc and the compensation to be made for surface damage etc see the Inclosure Act 1859 s 1 (repealed). The compensation could be payable wholly by the lord or other owner of minerals or wholly by the owners of allotments, or partly by one and partly by the others: see s 2 (repealed). As to powers to work mines etc see s 3. As to allotments to provide materials for the repair of roads see COMMONS vol 13 (2009) PARA 420.

9 See COMMONS vol 13 (2009) PARA 423.

10 See the Inclosure Act 1845 s 76 (repealed).

11 See the Inclosure Commissioners Act 1851 s 9 (repealed).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(iii) Enfranchisement and Inclosure/317. Minerals in regulated pasture.

317. Minerals in regulated pasture.

If any part of the land dealt with on inclosure was converted into regulated pasture, the mines¹ under the part so converted could with the consent of the lord and a majority in value of the other persons interested be reserved to the lord, and the mines under the parts allotted in severalty became the property of the persons entitled to the allotments². If not so dealt with, the mines beneath the regulated pasture vested in the persons having rights in them in proportion to their shares³.

1 For the meaning of 'mine' see PARA 5 ante.

2 See the Inclosure Act 1845 s 97 (repealed). As to the conversion of land into regulated pasture see COMMONS vol 13 (2009) PARA 421.

3 See *ibid* s 116 (as amended); and COMMONS vol 13 (2009) PARA 421.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(iii) Enfranchisement and Inclosure/318. Minerals unaffected by inclosure.

318. Minerals unaffected by inclosure.

The rights and property in mines and minerals¹ which had been severed from the surface before the inclosure, and all incidental rights, remained unaffected by the inclosure if not compensated for; and mines leased before the inclosure were also unaffected². Minerals under inclosures of more than 20 years' standing were not adversely affected by any inclosure proceedings³.

1 As to the meaning of 'mines and minerals' see PARA 12 ante; and for the meaning of 'mine' see PARA 5 ante.

2 See the Inclosure Act 1845 s 98 (as amended).

3 See the Inclosure Act 1847 s 3 (repealed).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(iv) Registration/319. Registration of title to mines and minerals.

(iv) Registration

319. Registration of title to mines and minerals.

The title to mines and minerals¹ the ownership of which is severed from that of the land² in which they are situated may be registered³, but registration is not compulsory⁴. Mines and minerals may also be registered as parcel of the land under which they are situated either by implication as included in the expression 'land'⁵, or by express entry on the register⁶. Mines and minerals under registered land may be severed from the surface either by registered transfer or by an unregistered instrument⁷.

Application for the registration of mines and minerals severed from the land is made and proceeded with in the same manner as in the case of other hereditaments, subject to modifications; and plans necessary for identifying the mines and minerals together with particulars of working rights are required⁸. The conveyance of mines and minerals the title to which is registered is effected by the use of transfers in the specified form⁹.

1 As to the meaning of 'mines and minerals' see PARA 12 note 26 ante.

2 'Land' includes, inter alia, mines and minerals, whether or not held with the surface: see the Land Registration Act 2002 s 132(1).

3 As to registration of title to land generally see LAND REGISTRATION.

4 Certain rights in mines and minerals are 'overriding interests' under the Land Registration Act 2002: see s 11(4)(a), (b); and LAND REGISTRATION. Those interests include: (1) an interest in any coal or coal mine, the rights attached to any such interest and the rights of any person under the Coal Industry Act 1994 s 38, s 49 or s 51 (Land Registration Act 2002 s 11, Sch 1 para 7); (2) in the case of land to which title was registered before 1898, rights to mines and minerals (and incidental rights) created before 1898 (Sch 1 para 8); and (3) in the case of land to which title was registered between 1898 and 1925 inclusive, rights to mines and minerals (and incidental rights) created before the date of registration of the title (Sch 1 para 9). See LAND REGISTRATION.

5 See *ibid* s 132(1).

6 The proprietor of land who is also the proprietor of the mines and minerals may be expressly registered as such proprietor by a note to that effect in the register. No indemnity is payable on account of any mines or minerals or the existence of any right to work or get mines or minerals, unless it is noted on the register that the title includes the mines or minerals: see *ibid* s 103, Sch 8 para 2; and LAND REGISTRATION.

7 See LAND REGISTRATION.

8 See LAND REGISTRATION.

9 See LAND REGISTRATION.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(2) DISPOSITIONS OTHER THAN LEASES/(iv) Registration/320. Registration of land charges.

320. Registration of land charges.

Charges affecting mines and minerals¹, whether or not severed from the surface, may be registered under the Land Charges Act 1972 and the Local Land Charges Act 1975 in the same way as charges which affect non-mineral land². The law relating to such charges is discussed elsewhere in this work³.

1 As to the meaning of 'mines and minerals' see PARA 12 ante; and for the meaning of 'mine' see PARA 5 ante.

2 See the Land Charges Act 1972 s 17(1); the Local Land Charges Act 1975 s 16(1) ('land' includes mines and minerals, whether or not severed from the surface); and LAND CHARGES.

3 See LAND CHARGES.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(3) LEASES/(i) In general/321. Nature of mining lease.

(3) LEASES

(i) In general

321. Nature of mining lease.

A lease¹ may be granted of land or any part of land, and since minerals are a part of the land² it follows that a lease can be granted of the surface of the land and the minerals below, or of the surface alone³, or of the minerals alone⁴. It has been said that a contract for the working and getting of minerals, although for convenience called a mining lease, is not in reality a lease at all in the sense in which one speaks of an agricultural lease, and that such a contract, properly considered, is really a sale of a portion of the land at a price payable by instalments, that is, by way of rent or royalty, spread over a number of years⁵.

1 As to leases generally see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 73 et seq.

2 See PARA 19 ante. For the meaning of 'minerals' see PARA 12 ante.

3 See eg *Masters v Green* (1888) 20 QBD 807 at 808, DC, per Field J.

4 *Jegon v Vivian* (1865) LR 1 CP 9 at 18; on appeal (1868) LR 3 HL 285; and see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 17.

5 See *Gowan v Christie* (1873) LR 2 Sc & Div 273 at 284, HL, per Lord Cairns; *Coltness Iron Co v Black* (1881) 6 App Cas 315 at 335, HL, per Lord Blackburn; *Re Aldam's Settled Estate* [1902] 2 Ch 46 at 56, CA, per Collins MR; *Earl Fitzwilliam's Collieries Co v Phillips* [1943] AC 570 at 582, [1943] 2 All ER 346 at 350, HL, per Lord Wright.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(3) LEASES/(i) In general/322. Statutory definitions of 'mining lease'.

322. Statutory definitions of 'mining lease'.

In the Law of Property Act 1925, 'mining lease' means a lease for mining purposes, that is, the searching for, winning¹, working, getting, making merchantable, carrying away or disposing of mines and minerals², or connected purposes, and includes a grant or licence³ for mining purposes⁴; and 'lease' includes an underlease or other tenancy⁵.

In the Settled Land Act 1925⁶ and the Landlord and Tenant Act 1927, 'mining lease' means a lease⁷ for any mining purpose or connected purposes, and 'mining purposes' includes the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away and disposing of mines and minerals⁸, in or under land⁹, and the erection of buildings, and the execution of engineering and other works suitable for those purposes¹⁰.

'Mining lease' is also defined for the purposes of the Opencast Coal Act 1958¹¹, whilst 'coal-mining lease'¹², 'lease'¹³ and 'mine of coal'¹⁴ were all defined for the purposes of the Coal Act 1938.

1 See *Lewis v Fothergill* (1869) 5 Ch App 103 at 111 per Lord Hatherley LC; *Lord Rokeby v Elliot* (1879) 13 ChD 277 at 279, CA (revsd (1881) 7 App Cas 43, HL, without affecting this point).

2 As to the meaning of 'mines and minerals' in the Law of Property Act 1925 see PARA 12 note 26 ante.

3 As to licences see PARA 349 et seq post.

4 See the Law of Property Act 1925 s 205(1)(xiv).

5 See *ibid* s 205(1)(xxiii).

6 This definition enables a tenant for life, in a proper case, to grant a lease of a right to let down or damage the surface: *Sitwell v Earl of Londesborough* [1905] 1 Ch 460; cf *IRC v Joicey (No 2)* [1913] 2 KB 580, CA (release by copyholder of right to support not a lease of a right to work minerals).

7 In the Settled Land Act 1925, 'lease' includes an agreement for a lease (see s 117(1)(x)); and in the Landlord and Tenant Act 1927, 'lease' means a lease, underlease or other tenancy, assignment operating as a lease or underlease, or an agreement for such lease, underlease, tenancy or assignment (see s 25(1)).

8 As to the meaning of 'mines and minerals' in the Settled Land Act 1925 see PARA 12 note 26 ante.

9 In the Settled Land Act 1925, the settled land or any other land: see s 117(1)(xv).

10 See *ibid* s 117(1)(xv); and the Landlord and Tenant Act 1927 s 25(1). This definition of 'mining lease' is applied for the purposes of the Landlord and Tenant Act 1954 Pt II (ss 23-46) (as amended) by s 46. Part II (as amended) (which provides for security of tenure for business, professional and other tenants) does not apply to a tenancy created by a mining lease: s 43(1)(b). See further LANDLORD AND TENANT.

11 See the Opencast Coal Act 1958 s 51(1); and PARA 430 note 6 post.

12 'Coal-mining lease' means in relation to any coal a lease that confers a right to work and carry away that coal, and means in relation to any mine of coal a lease that confers a right to use it for a coal-mining purpose: see the Coal Act 1938 s 44 (repealed with savings).

13 'Lease' includes a licence (whether personal or by way of profit à prendre) that confers a right to work and carry away coal or a right to use a mine of coal for a coal-mining purpose: see *ibid* s 44 (repealed with savings).

14 See *ibid* s 44 (repealed with savings); and PARA 1 note 8 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(3) LEASES/(i) In general/323. Rents and royalties.

323. Rents and royalties.

An agreement for a lease usually contains stipulations as to the dead rents¹ and other rents and royalties to be reserved by, and the covenants and provisions to be inserted in, the lease, but the omission to provide for the payment of a dead rent does not render the agreement so inequitable as to be unenforceable².

Rent and royalties are true rents in the sense that they are incident to the reversion³, but periodical payments under a lease of mines for a specific period may amount to personal debts only⁴.

A lessee who goes into possession and works minerals before completion of the lease may be ordered on interim application to pay into court the amount of royalties due in respect of minerals raised⁵.

1 For the meaning of 'dead rent' see PARA 333 post.

2 *Walters v Morgan* (1861) 3 De GF & J 718.

3 *Barrs v Lea* (1864) 33 LJ Ch 437.

4 *Lord Hatherton v Bradburne* (1843) 13 Sim 599; and see *Re Smith (a lunatic)* (1874) 10 Ch App 79 at 86 per James LJ. For the meaning of 'mine' see PARA 5 ante.

5 *Lewis v James* (1886) 32 ChD 326, CA. For the meaning of 'minerals' see PARA 12 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(3) LEASES/(i) In general/324. Usual provisions in leases.

324. Usual provisions in leases.

The statutory formalities regarding the disposition of an interest in land will apply to a contract for a mining lease¹. In a contract for a lease for working a mine², time is of the essence of the contract even if not expressly stated to be so³. Mining leases usually contain clauses providing for the reference of disputes to arbitration⁴ or determination by an expert where the value of the minerals gotten is in dispute.

1 See the Law of Property (Miscellaneous Provisions) Act 1989 s 2 (as amended); and REAL PROPERTY.

2 For the meaning of 'mine' see PARA 5 ante.

3 *Macbryde v Weekes* (1856) 22 Beav 533; *Green v Sevin* (1879) 13 ChD 589 at 594, obiter, per Fry J. Notice may be given fixing a time for completion if no time is named in the contract: *Macbryde v Weekes* supra.

4 For the effect of such a clause see *Willesford v Watson* (1873) 8 Ch App 473. As to arbitration generally see ARBITRATION vol 2 (2008) PARA 1201 et seq. For the meaning of 'minerals' see PARA 12 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(3) LEASES/(ii) Property demised; Consideration/A. PARCELS/325. Parcels in agreement for lease.

(ii) Property demised; Consideration

A. PARCELS

325. Parcels in agreement for lease.

Unless the minerals¹ intended to be included in an agreement for a lease² are properly defined in it, the agreement will be unenforceable. Uncertainty may arise either from an imperfect enumeration of the minerals to be dealt with³ or an indefinite description of the area under which they are situated⁴. A description by name of the area is sufficient if the boundaries can be ascertained⁵. An agreement for the lease of a particular vein is not void merely because the vein cannot be found⁶.

1 For the meaning of 'minerals' see PARA 12 ante.

2 As to leases, agreements for leases and their costs see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 73 et seq.

3 *Price v Griffith* (1851) 1 De GM & G 80 (agreement to lease 'coals etc').

4 *Lancaster v De Trafford* (1862) 31 LJ Ch 554 (description of ironstone as situate under lands at Patricroft, Patricroft being a district without defined boundaries); *Davis v Shepherd* (1866) 1 Ch App 410 (agreement defined the minerals by reference to the supposed line of a fault and approximate acreage, but the fault did not run in the direction supposed, and would have included a larger area: agreement held to be unenforceable).

5 *Haywood v Cope* (1858) 25 Beav 140.

6 *Jefferys v Fairs* (1876) 4 ChD 448. For the meaning of 'vein' see PARA 16 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(3) LEASES/(ii) Property demised; Consideration/A. PARCELS/326. Parcels in lease.

326. Parcels in lease.

Mines and minerals¹ included in a demise are usually described by reference to the surface under which they lie. Faults crossing a mineral area form natural boundaries between different mines, and are sometimes used to define the extent of the demise by reference to a line drawn on a plan showing the position or supposed position of the fault². When a plan is indorsed on or annexed to the lease and referred to in it, the plan ought to be looked at as part of the description³. If there is any discrepancy between the plan and description, the description, if clear, will prevail⁴, but endeavour should be made to reconcile any apparent discrepancy⁵. Where the superficial limits of demised mines are ascertained it is sometimes a question of construction what seams or veins are included in the demise⁶, or as to the extent of the demise where the description contains technical expressions which have a definite meaning according to local usage⁷.

1 For the meaning of 'mines and minerals' see PARA 12 ante; and for the meaning of 'mine' see PARA 5 ante.

2 *Davis v Shepherd* (1866) 1 Ch App 410.

3 *Lyle v Richards* (1866) LR 1 HL 222.

4 See *Taylor v Parry* (1840) 9 LJCP 298; and DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 229. As to the application of the rule *falsa demonstratio non nocet* see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 227.

5 *Brain v Harris* (1855) 10 Exch 908.

6 *Carr v Benson* (1868) 3 Ch App 524, CA (where the meaning of a grant was interpreted by reference to a concurrent licence); *Dugdale v Robertson* (1857) 3 K & J 695 (which restricted any right to mine under certain defined lands).

7 *Clayton v Gregson* (1836) 5 Ad & El 302; and see CUSTOM AND USAGE.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(3) LEASES/(ii) Property demised; Consideration/A. PARCELS/327. Exceptions and reservations.

327. Exceptions and reservations.

It is usual in mining leases to make certain exceptions and reservations¹ in favour of the lessor. These are intended either for the protection of the demised mines or the surface land and buildings on it, or for the preservation of the lessor's right to work excepted mines². Sometimes there is an exception from the liberty to work, in which case the part of the mine so excepted remains subject to the demise³. Thus a covenant to work mines and get the minerals⁴ until the whole are worked, except pillars and barriers which the lessor may require to be left unworked, operates as a partial exemption from the covenant to work, and the lessee retains an interest in the pillars and barriers entitling him to compensation on compulsory acquisition⁵. There is an implied reservation to the lessor of the right to descend the lessee's shafts for the purpose of inspecting the demised mines and the lessee's workings in them⁶.

1 As to the difference between an exception and a reservation see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 237.

2 For the meaning of 'mine' see PARA 5 ante.

3 *Dugdale v Robertson* (1857) 3 K & J 695; *Mostyn v Lancaster* (1883) 23 ChD 583, CA.

4 For the meaning of 'minerals' see PARA 12 ante.

5 *Swindell v Birmingham Canal Co* (1860) 9 CBNS 241.

6 *Lewis v Marsh* (1849) 8 Hare 97.

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B. RIGHTS OF WORKING

328. General principles.

A lease of mines or minerals includes by implication a right to get out or enjoy all minerals¹ except coal². The incidental power, however, warrants nothing beyond what is strictly necessary for the convenient working of the minerals (which does not include the surface)³, and it is usual in a mining lease to grant express liberty to work and to do such other things as, in the particular instance, are contemplated as being desirable for that purpose. An implied power is not restricted by the grant of an express power which is exercisable to a greater extent or for a longer period⁴; but if the express power is restrictive of that which would otherwise be implied the grantee is limited to the exercise of the express power⁵. Express powers must be exercised in good faith in a reasonable course of working⁶.

1 *Rowbotham v Wilson* (1860) 8 HL Cas 348 at 360 per Lord Wensleydale; *Ramsay v Blair* (1876) 1 App Cas 701 at 703, HL, per Lord Chelmsford; *Borys v Canadian Pacific Rly Co* [1953] AC 217, [1953] 1 All ER 451, PC. As to powers of working where mines are included in leases of land see PARA 371 et seq post. As to surface rights generally see PARA 281 et seq ante. For the meaning of 'mine' see PARA 5 ante; and for the meaning of 'minerals' see PARA 12 ante.

2 Unworked coal is vested in the Coal Authority which has power to dispose of it: see PARAS 52, 61 ante. Coal-mining operations are required to be licensed under the Coal Industry Act 1994 Pt II (ss 25-36) (as amended): see PARA 91 et seq ante. As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante. As to the Coal Authority see PARA 52 et seq ante.

3 *Earl of Cardigan v Armitage* (1823) 2 B & C 197 at 211; *Lord Darcy v Askwith* (1618) Hob 234; *Marshall v Borrowdale Plumbago Mines and Manufacturing Co Ltd* (1892) 8 TLR 275.

4 *Earl of Cardigan v Armitage* (1823) 2 B & C 197; *Hodgson v Field* (1806) 7 East 613; and see *Whidborne v Ecclesiastical Comrs for England* (1877) 7 ChD 375; and DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 184.

5 *Re Wilson Syndicate Conveyance, Wilson v Shorrock* [1938] 3 All ER 599 (working restricted to underground working); *General Accident Fire and Life Assurance Corp'n Ltd v British Gypsum Ltd* [1967] 3 All ER 40, [1967] 1 WLR 1215 ('win' included searching for minerals but construction of deed confined searching to underground searching); and see PARA 281 ante.

6 *Honeywell Cotton Spinning Co v Marland* [1875] WN 46.

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329. Shafts.

If minerals¹ cannot be got otherwise, the owner or lessee of the minerals may bore in a reasonable way through the lessor's land and minerals not included in the demise in order to reach them, and it does not matter whether the barrier is horizontal or vertical².

The grant of an express liberty to sink pits or shafts³ imposes no obligation on the lessee to sink, even though at the time the lease was granted he did not own any adjoining mines⁴, or although it appears from the lease that all parties contemplated that a shaft would be sunk⁵, or that working by instroke is less advantageous⁶, or that the lease contains a covenant that the mines will be delivered up at the end of the term in such a state that the working may be continued by the reversioner⁷. However, if the lease contains a covenant to work, and the mine cannot be worked otherwise, the lessee is bound to sink a shaft⁸, and in some cases a covenant to work in a proper and workmanlike manner may impose a similar liability⁹. A proper and workmanlike manner may not mean the best possible mode of working for the lessor, but it means in such a manner as shall not be simply an attempt to get out of the earth as much mineral as can be got for the particular purpose of the lessee, regardless of any ordinary or workmanlike proceeding¹⁰. If the lessee enters into an absolute covenant to sink a shaft, performance will not be excused because it would be useless or unprofitable¹¹. It is, of course, otherwise if the covenant is made subject to a qualification which excuses performance¹². The measure of damages for breach of a covenant to sink a shaft is the sum which the lessor must expend in sinking where the lessor can go onto the soil¹³. Where the lessor cannot go onto the soil the damages are either the amount the lessee would have expended in sinking the pit or where the lessee covenanted to pay the lessor a sum if minerals were found when the pit was sunk, that sum¹⁴.

Liberty to sink a pit creates an interest in the land in respect of which compensation is payable when the surface is taken in the exercise of compulsory powers¹⁵.

A lessee of minerals who sinks a shaft in land of which the surface is occupied by another must keep the shaft properly fenced¹⁶.

1 For the meaning of 'minerals' see PARA 12 ante.

2 *Re Lord Gerard and London and North Western Rly Co* [1895] 1 QB 459 at 466, CA, per Lord Esher MR; cf *Goold v Great Western Deep Coal Co* (1865) 2 De GJ & Sm 600; and see also *Harris v Ryding* (1839) 5 M & W 60.

3 As to what this power impliedly includes see PARA 182 ante.

4 *Jegon v Vivian* (1871) 6 Ch App 742. For the meaning of 'mine' see PARA 5 ante.

5 *James v Cochrane* (1853) 8 Exch 556, Ex Ch; *Jegon v Vivian* (1871) 6 Ch App 742.

6 *Wheatley v Westminster Brymbo Coal Co* (1869) LR 9 Eq 538. As to instroke see PARA 330 post.

7 *Lewis v Fothergill* (1869) 5 Ch App 103; and see *Jegon v Vivian* (1871) 6 Ch App 742.

8 *James v Cochrane* (1852) 7 Exch 170 at 178, obiter, per Parke B; affd (1853) 8 Exch 556, Ex Ch.

9 *Lewis v Fothergill* (1869) 5 Ch App 103 (working the coal by instroke was held under the circumstances to be working in a proper and workmanlike manner).

10 *Lewis v Fothergill* (1869) 5 Ch App 103 at 108 per Lord Hatherley LC.

- 11 *Jervis v Tomkinson* (1856) 1 H & N 195.
- 12 *Hanson v Boothman* (1810) 13 East 22.
- 13 *Pell v Shearman* (1855) 10 Exch 766 at 769 per Parke B.
- 14 See *Pell v Shearman* (1855) 10 Exch 766.
- 15 *Re Masters and Great Western Rly Co* [1901] 2 KB 84, CA; and see COMPULSORY ACQUISITION OF LAND.
- 16 *Williams v Groucott* (1863) 4 B & S 149; and see PARA 284 ante.

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330. Instroke.

'Instroke' means liberty to work a demised mine¹ from an adjoining mine. In the absence of express stipulation a lessee is not bound to sink a shaft from the surface, but may work by instroke², and may make use, for that purpose, of apertures lawfully made in any barrier which he has covenanted to leave between the demised mine and adjoining mines³.

¹ For the meaning of 'mine' see PARA 5 ante.

² *Whalley v Ramage* (1862) 10 WR 315; *Lewis v Fothergill* (1869) 5 Ch App 103; *Jegon v Vivian* (1871) 6 Ch App 742; and see PARA 329 ante.

³ *James v Cochrane* (1853) 8 Exch 556, Ex Ch (where there was liberty to create the apertures in the barrier).

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331. Outstroke.

'Outstroke' means liberty to work an adjoining mine¹ from the demised mine. Whether or not a lessee may work by outstroke depends on the extent of the demise. If access to the adjoining mine, sufficient for the purpose of working, can be obtained without entry on property not included in the lease, or without unwarranted user of any rights of way, the lessee may work by outstroke without express liberty to do so. In many cases the lease only grants to the lessee rights of way over the surface and through the shaft for the purpose of working the demised mine, and in such cases the lessee cannot work by outstroke, as he cannot use rights of way for purposes other than those for which they are granted².

¹ For the meaning of 'mine' see PARA 5 ante.

² As to the rights of the lessee in the cubical space occupied or formerly occupied by minerals see PARA 372 post. As to user of rights of way see PARA 257 et seq ante. For the meaning of 'minerals' see PARA 12 ante.

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332. Right to withdraw support.

If it is intended that the lessee is to be entitled to work so as to withdraw support from the surface, the lease should grant express liberty so to work¹. The mere fact of giving a right to sink pits and to work and get minerals is not sufficient to deprive the surface owner of his common law right of support². To displace this common law right permission to withdraw support must be given expressly or by necessary implication³. Cases of express permission present no difficulty; but the question whether or not permission is given by implication must be decided by consideration of the whole of the lease and of the state of knowledge at the time when, and the circumstances in which, it was made, as to whether according to the local practice the minerals could be got without subsidence, of which oral evidence may be given⁴. The test is whether the introduction of a clause to the effect that the mines⁵ must be worked so as not to let down the surface would or would not be inconsistent with the actual demise: if it would not, then the surface cannot be let down⁶.

1 The right to withdraw support may, however, arise by implication: see PARA 130 et seq ante.

2 *Davis v Treharne* (1881) 6 App Cas 460, HL; *Butterknowle Colliery Co v Bishop Auckland Industrial Co-operative Co* [1906] AC 305 at 313, HL, per Lord Macnaghten. As to the right of support see further PARA 116 et seq ante. For the meaning of 'minerals' see PARA 12 ante.

3 *Davis v Treharne* (1881) 6 App Cas 460, HL; *Butterley Co Ltd v New Hucknall Colliery Co Ltd* [1910] AC 381, HL. See further PARA 129 et seq ante.

4 *Butterley Co Ltd v New Hucknall Colliery Co Ltd* [1910] AC 381, HL; *Locker-Lampson v Staveley Coal and Iron Co Ltd* (1908) 25 TLR 136.

5 For the meaning of 'mine' see PARA 5 ante.

6 *Butterknowle Colliery Co v Bishop Auckland Industrial Co-operative Co* [1906] AC 305 at 309, HL, per Lord Loreburn LC. For cases in which it has been held that an implied right is granted see *Butterley Co Ltd v New Hucknall Colliery Co Ltd* [1910] AC 381, HL; *Locker-Lampson v Staveley Coal and Iron Co Ltd* (1908) 25 TLR 136; *Smith v Darby* (1872) LR 7 QB 716; *Shafro v Johnson* (1863) 8 B & S 252n; *Brewer v Rhymney Iron Co* [1910] 1 Ch 766; and see PARA 130 et seq ante. It is submitted that little reliance can be placed on the cases decided before *Davis v Treharne* (1881) 6 App Cas 460, HL. As to the right of a tenant for life to grant a lease of the right to let down the surface see *Sitwell v Earl of Lonsdale* [1905] 1 Ch 460.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(3) LEASES/(ii) Property demised; Consideration/C. CONSIDERATION/333. Dead rent.

C. CONSIDERATION

333. Dead rent.

It is usual in mining leases to reserve both a fixed annual rent (otherwise known as a 'dead rent', 'minimum rent' or 'certain rent') and royalties varying with the amount of minerals worked¹. The object of the fixed rent is to ensure that the lessee will work the mine²; but it is sometimes ineffective for that purpose³. Another function of the fixed rent is to ensure a definite minimum income to the lessor in respect of the demise.

If a fixed rent is reserved, it is payable until the expiration of the term even though the mine is not worked⁴, or is exhausted during the currency of the term⁵, or is not worth working⁶, or is difficult or unprofitable to work owing to faults⁷ or accidents⁸, or even if the demised seam proves to be non-existent⁹.

Where a fixed rent is reserved to commence from the time when a certain quantity of minerals has been got and the lessee covenants to get that quantity without delay, the commencement of the payment will not be delayed should the lessee fraudulently fail to complete the getting of the quantity¹⁰.

1 See *Mitchell v Mosley* [1914] 1 Ch 438, CA. Rent and royalties to be rendered in kind may be reserved: see *R v Earl of Pomfret* (1816) 5 M & S 139; *Re Moody and Yates' Contract* (1885) 30 ChD 344 at 346, 347, CA, per Brett MR. As to the use of the terms 'rent' and 'royalty' to denote payments in respect of coal see *Greville-Nugent v Mackenzie* [1900] AC 83 at 87, 88, HL, per the Earl of Halsbury LC. As to the taxation of mining rents and royalties generally see INCOME TAXATION. For the meaning of 'minerals' see PARA 12 ante.

2 *Jegon v Vivian* (1865) LR 1 CP 9 at 34 per Erle CJ (subsequent proceedings *Jegon v Vivian* (1871) 6 Ch App 742 at 758 per Lord Hatherley LC); *Re Aldam's Settled Estate* [1902] 2 Ch 46 at 60, CA, per Stirling LJ. For the meaning of 'mine' see PARA 5 ante.

3 See *Glassbrook Bros Ltd v Leyson* [1933] 2 KB 91 at 119, CA, per Slesser LJ, and at 123 per Romer LJ. See also *McDonald v Kent Coal Co Ltd* [1943] 3 WWR 207 (Can).

4 *Jegon v Vivian* (1871) 6 Ch App 742 at 757 per Lord Hatherley LC; *Jones v Reynolds* (1836) 7 C & P 335.

5 *R v Bedworth Inhabitants* (1807) 8 East 387; *Marquis of Bute v Thompson* (1844) 13 M & W 487.

6 *Haywood v Cope* (1858) 25 Beav 140 at 149 per Romilly MR; *Strelley v Pearson* (1880) 15 ChD 113.

7 *Mellers v Duke of Devonshire* (1852) 16 Beav 252; *Ridgway v Sneyd* (1854) Kay 627.

8 *Phillips v Jones* (1839) 9 Sim 519.

9 *Jefferys v Fairs* (1876) 4 ChD 448. Possibly if the seam demised were found to have been previously worked out it would be treated as a case of mutual mistake (*Ridgway v Sneyd* (1854) Kay 627 at 635 per Page Wood V-C), and thus as a ground for rescinding the lease (*Solle v Butcher* [1950] 1 KB 671, [1949] 2 All ER 1107, CA). However, as to the validity of an agreement for a lease of a particular vein even though it cannot be found see PARA 325 ante.

10 *Green v Sparrow* (1725) 3 Swan 408n.

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334. Royalties.

A royalty, in the sense in which the word is used in connection with mining leases, is a payment to the lessor proportionate to the amount of the demised mineral worked within a specified period¹. A royalty is a true rent², and as such may be apportioned³ on a time basis⁴. Usually the royalties are made to merge in the fixed rent by means of a provision that the lessee, without any additional payment, may work, in each period for which a payment of fixed rent is made, so much of the minerals as would, at the royalties reserved, produce a sum equal to the fixed rent.

Reservations of royalties take different forms and, as a lessor may reserve royalties in the form he considers most suitable or advantageous in any particular case, the questions which arise are questions of construction and the decided cases cannot be reduced to any principle generally applicable⁵. Sometimes in colliery leases coal consumed in working was freed from royalty⁶.

An average or short workings clause by which overpayments by the lessee in years in which the workings are less than those covered by the minimum or fixed rent are permitted to be recouped in subsequent years in which the workings are sufficient to produce royalties in excess of that minimum⁷ confers no right of property in minerals remaining unworked when the lease is determined⁸.

1 See *Bridges v Potts* (1864) 17 CBNS 314 at 345 per Willes J. For the meaning of 'minerals' see PARA 12 ante.

2 *R v Westbrook, R v Everist* (1847) 10 QB 178 at 203; and see *Verdin v Coughtrie (Inspector of Taxes)* [1961] AC 880 at 894, [1961] 1 All ER 593 at 596, HL, per Lord Denning; *T and E Homes Ltd v Robinson (Inspector of Taxes)* [1979] 2 All ER 522, [1979] 1 WLR 452, CA.

3 See under the Apportionment Act 1870 s 2 (as amended): see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 278.

4 *Coal Commission v Earl Fitzwilliam's Royalties Co* [1942] Ch 365, [1942] 2 All ER 56.

5 *Clifton v Walmesley* (1794) 5 Term Rep 564 (royalty payable on sums for which coal should sell at pit's mouth: construction of covenant held not affected by mistaken conduct of parties). See also *Gerrard v Clifton* (1798) 7 Term Rep 676; *Earl of Shrewsbury v Gould* (1819) 2 B & Ald 487 (lessee's duty to burn lime); *Edwards v Rees* (1836) 7 C & P 340 (royalty payable on money which should arise from sales, no allowance for bad debts); *Bishop v Goodwin* (1845) 14 M & W 260 (covenant to pay royalties quarterly, no average over other quarters of same year); *Buckley v Kenyon* (1808) 10 East 139; *Cartwright v Forman* (1866) 7 B & S 243 (delivery of coal for lessor's use when mine not workable at a profit); *Morley v Yorkshire Lead Mines* [1890] WN 47 (royalty payable on dressed or undressed ore); *Elliot v Lord Rokeby* (1881) 7 App Cas 43, HL (deduction allowed for expenses of winning where several seams); *Mitchell v Mosley* [1914] 1 Ch 438, CA.

6 *Senhouse v Harris* (1862) 5 LT 635.

7 As to the construction of such a clause see *Clayton v Penson* [1878] WN 158.

8 See *Re Fullerton's Will* [1906] 2 Ch 138.

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335. Wayleave royalties.

Royalties estimated similarly to royalties on demised minerals¹ are often reserved in respect of minerals worked by way of outstroke² from and brought through the demised mine³ or over surface land⁴. Such minerals are frequently referred to as foreign minerals and such royalties are known as wayleave rents or wayleaves. If a wayleave is used without authority, the measure of damages is the sum which would properly have been payable in royalty if the right of wayleave had been granted⁵.

1 For the meaning of 'minerals' see PARA 12 ante.

2 As to outstroke see PARA 331 ante.

3 *Senhouse v Harris* (1862) 5 LT 635. For the meaning of 'mine' see PARA 5 ante.

4 *Directors etc of Great Western Rly Co v Rous* (1870) LR 4 HL 650.

5 *Jegon v Vivian* (1871) 6 Ch App 742; *Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25, HL; *Whitwham v Westminster Brymbo Coal and Coke Co* [1896] 2 Ch 538, CA; and see PARA 264 ante.

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(iii) Covenants

A. COVENANTS TO PAY RENT, ROYALTIES, TAXES ETC

336. Covenant to pay rent and royalties.

Nearly every mining lease contains a covenant by the lessee for payment of the specified rent and royalties, and sometimes, where the lessee is under an express obligation to refrain from or to do certain acts, a stipulation is inserted for the payment of a penal sum, either fixed in amount or proportionate to the extent to which the obligation is disregarded, as where the lessee is under an obligation to restore the surface at the end of the term to its original condition¹. Where the covenant is absolute in its terms, a stipulation for the payment of a sum in case of breach does not give the lessee the right to commit the breach on payment of that sum².

The benefit of a covenant for the payment of wayleave rent passes with the land over which the wayleave has been granted³.

1 *Re Earl of Mexborough and Wood* (1882) 47 LT 516, which involved consideration of whether the sum payable was a penalty and therefore unenforceable. It was adjudged not to exceed the amount of damage that would be caused. Such provisions are commonly found in modern day construction or building contracts and the amount payable referred to as 'liquidated damages'. See further BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS.

2 *Forrest v Merry and Cuninghame Ltd* [1909] AC 417, HL.

3 *Lord Hastings v North Eastern Rly Co* [1898] 2 Ch 674; affd [1899] 1 Ch 656, CA, [1900] AC 260, HL. See the Law of Property Act 1925 s 141 in the case of tenancies granted before 1 January 1996, and the Landlord and Tenant (Covenants) Act 1995 in the case of tenancies granted on or after that date; and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 567. As to wayleave rents and royalties see PARA 335 ante.

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337. Action for and indemnity against rent and royalties.

No claim may be brought, or distress made, to recover arrears of rent, or damages in respect of arrears of rent, after the expiration of six years from the date on which the arrears became due¹. In a claim for recovery of rents and royalties, interest may also be claimed². A claim action for an account does not lie against a person entitled in equity who is in possession of the demised property, nor is he liable upon the covenants in the lease³.

Where the assignee of a lease covenanted with his assignor to pay the rents reserved by the lease so long as he was in possession, and at all times thereafter to indemnify his assignor against the rent payable under the lease, the covenant for indemnity was not restricted to the rents during the period while the assignee was in possession⁴.

1 See the Limitation Act 1980 s 19; and LIMITATION PERIODS vol 68 (2008) PARA 1033.

2 *Newton v Nock* (1880) 43 LT 197. See also the Law Reform (Miscellaneous Provisions) Act 1934 s 3 (as amended); the Supreme Court Act 1981 s 35A (as added); the County Courts Act 1984 s 69 (as amended); and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1303.

3 *Walters v Northern Coal Mining Co* (1855) 5 De GM & G 629; *Cox v Bishop* (1857) 8 De GM & G 815. The decisions to the contrary in *Clavering v Westley* (1735) 3 P Wms 402 and in *Wright v Pitt* (1870) LR 12 Eq 408 cannot be relied on: see *Ramage v Womack* [1900] 1 QB 116. See also LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 454. As to the right to an account in equity see *Parrott v Palmer* (1834) 3 My & K 632; and EQUITY.

4 *Crossfield v Morrison* (1849) 7 CB 286. However, such covenants are now restricted by the effect of the Landlord and Tenant (Covenants) Act 1995: see LANDLORD AND TENANT.

UPDATE

337 Action for and indemnity against rent and royalties

NOTE 2--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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338. Covenant to pay rates, taxes and other assessments.

The lessee usually expressly covenants to pay all rates, taxes and other assessments¹, and in the absence of an express covenant an undertaking to pay rates and taxes may be inferred from words in the *reddendum* importing payment of rent clear of all taxes etc. Usually the covenant is worded so as to include all assessments that may be imposed in the future². If the lessee covenants to pay all rates, taxes and assessments he is only liable for all such payments as are of a recurring nature, but if such a covenant includes any of the words 'duties', 'outgoings', 'impositions' or 'burdens' he is generally liable for non-recurring expenses of permanent statutory improvements³. However, 'outgoings' has been held not to include the cost of statutory drainage works carried out by a lessee under a mining lease where that cost was deductible from the rent under a local Act⁴.

1 As to the taxation of mining concerns and mineral royalties see PARA 359 post; and INCOME TAXATION; LANDLORD AND TENANT.

2 See *Duke of Devonshire v Barrow Haematite Steel Co Ltd* (1877) 2 QBD 286, CA; *Chaloner v Bolckow* (1878) 3 App Cas 933, HL.

3 See eg *Thompson v Lapworth* (1868) LR 3 CP 149; *Budd v Marshall* (1880) 5 CPD 481, CA; and see further LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 527.

4 *Dalton Main Collieries Ltd v Rossington Main Colliery Co Ltd and Amalgamated Denaby Collieries Ltd* [1941] Ch 268, [1941] 1 All ER 544, CA. As to impositions see *Denaby and Cadeby Main Collieries Ltd v Brodsworth Main Colliery Co Ltd* [1941] Ch 289n, CA.

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B. COVENANTS AS TO WORKING THE MINE

339. Covenant to work continuously.

Covenants as to working are inserted in a mining lease either to ensure that the demised mine will be worked continuously, or that it will be worked in a particular manner¹, or in some cases to effect both objects. A lessee is not bound to work continuously or at all unless he undertakes to do so², and it is often a difficult question of construction into which of the foregoing classes a particular covenant falls³.

If a lessee covenants without qualification⁴ to work the demised mine continuously he is liable for breach of covenant even if the working should prove difficult and unprofitable or even impossible⁵, and even if the dead rent⁶ is paid⁷, but a covenant to work continuously or at a certain rate may in some cases be construed to apply only to the minerals found, so that if none are discovered there is nothing to which the covenant can apply⁸. Sometimes covenants to work are qualified so as to save the lessee from useless expense. The extent of these qualifications is a question of construction⁹, extrinsic evidence being admissible to explain the accepted meaning of the terms used¹⁰.

Specific performance of a covenant to work continuously cannot be obtained, as the court refuses to supervise the working of a mine¹¹. The measure of damages for breach of a covenant to work is the amount which would in all probability have been paid to the lessor if the mine had been worked¹². Where working is unduly expensive a lessee may be relieved from such a covenant on payment to the lessor of all that he would receive under the lease and surrender of the lease¹³.

1 See PARA 340 post. For the meaning of 'mine' see PARA 5 ante.

2 *Quarrington v Arthur* (1842) 10 M & W 335 (undertaking to work mine discovered or opened: none were discovered or opened); *Wheatley v Westminster Brymbo Coal Co* (1869) LR 9 Eq 538; *Jegon v Vivian* (1871) 6 Ch App 742. As to the importance of such a covenant see *Glassbrook Bros Ltd v Leyson* [1933] 2 KB 91, CA. A lessee who has not covenanted to work may by agreement with a third person limit his workings to a specified amount: *Forrest v Merry and Cuninghame Ltd* [1909] AC 417, HL.

3 *Walker v Jeffreys* (1842) 1 Hare 341; *Wheatley v Westminster Brymbo Coal Co* (1869) LR 9 Eq 538; *Lord Abinger v Ashton* (1873) LR 17 Eq 358; *Charlesworth v Watson* [1906] AC 14, HL. See also *Doyershoek Asbestos Mine (Pty) Ltd v Estate Snyman* 1956 2 SA 304, SA SC App Div, where the law as stated in the text was considered by Centlivres CJ.

4 See the text and note 9 infra.

5 *Foley v Addenbrooke* (1844) 13 M & W 174; *Jervis v Tomkinson* (1856) 1 H & N 195; *Lord Clifford v Watts* (1870) LR 5 CP 577 at 588 per Willes J; *Jegon v Vivian* (1871) 6 Ch App 742; *Charlesworth v Watson* [1906] AC 14, HL; *Wigan Coal and Iron Co v Eckersley* (1910) 103 LT 468, HL; and see *Kinsman v Jackson* (1880) 42 LT 80 (on appeal 42 LT 558, CA), where the question was one of construction. Possibly where the mine is drowned without the default of the lessee, the lessee may not be liable for not working: see *Walker v Jeffreys* (1842) 1 Hare 341.

6 As to dead rent see PARA 333 ante.

7 *Whitehead v Bennett* (1861) 9 WR 626; *Simpson v Ingleby* (1872) 27 LT 695.

8 *Lord Clifford v Watts* (1870) LR 5 CP 577. For the meaning of 'minerals' see PARA 12 ante.

9 *Jones v Shears* (1836) 7 C & P 346; *Foley v Addenbrooke* (1844) 13 M & W 174; *Griffiths v Rigby* (1856) 1 H & N 237; *Lord Abinger v Ashton* (1873) LR 17 Eq 358; *Newton v Nock* (1880) 43 LT 197; cf *Swindell v Birmingham Canal Co* (1860) 9 CBNS 241.

10 *Clayton v Gregson* (1836) 5 Ad & El 302; and see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 198 et seq.

11 *Pollard v Clayton* (1855) 1 K & J 462; *Wheatley v Westminster Brymbo Coal Co* (1869) LR 9 Eq 538; and see *Lord Abinger v Ashton* (1873) LR 17 Eq 358. As to specific performance generally see SPECIFIC PERFORMANCE.

12 *Watson v Charlesworth* [1905] 1 KB 74, CA; affd [1906] AC 14, HL.

13 *Smith v Morris* (1788) 2 Bro CC 311; and see *Phillips v Jones* (1839) 9 Sim 519; *Mellers v Duke of Devonshire* (1852) 16 Beav 252; *Ridgway v Sneyd* (1854) Kay 627; *Simpson v Ingleby* (1872) 26 LT 543 (on appeal 27 LT 695). However, relief cannot be obtained from an absolute covenant to pay a minimum rent or to pay for a certain quantity of mineral whether got or not: *Mellers v Duke of Devonshire* supra. For the difference between the cases see *Ridgway v Sneyd* supra.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(3) LEASES/(iii) Covenants/B. COVENANTS AS TO WORKING THE MINE/340. Covenant to work in a particular manner.

340. Covenant to work in a particular manner.

A covenant to work a mine¹ in a particular way, as in a workmanlike manner or in accordance with the method usually practised in the district², does not bind the lessee to work at all, but only to work in the way specified when he does work³. However, if stipulations as to the method of working are added to a covenant to work, such stipulations do not detract from the obligation to work, but impose an additional obligation⁴.

In the absence of express stipulation, the convenience and business interests of a lessee in pursuing a regular course of working through contiguous areas held under different lessors do not affect his liability under any one of these leases. The lessee's liability must in each case be determined by reference to the lease in question and as if the obligation under the working covenant in that lease alone is upon him, and he is under no obligation to any other lessor⁵.

A covenant to work in a particular way will not be enforced by an order for specific performance or by an injunction restraining working in any other way⁶, but an injunction may be obtained to restrain a lessee from doing a particular act which he has covenanted not to do⁷.

¹ For the meaning of 'mine' see PARA 5 ante.

² A covenant to employ a particular method of working must be read in conjunction with the other provisions of the lease, and a different method may be adopted where necessary to avoid a breach of such other provisions: *Brewer v Rhymney Iron Co* [1910] 1 Ch 766.

³ *Wheatley v Westminster Brymbo Coal Co* (1869) LR 9 Eq 538; *Jegon v Vivian* (1871) 6 Ch App 742 at 757 per Lord Hatherley; *Lord Abinger v Ashton* (1873) LR 17 Eq 358.

⁴ *Walker v Jeffreys* (1842) 1 Hare 341; *Jervis v Tomkinson* (1856) 1 H & N 195; *Charlesworth v Watson* [1906] AC 14, HL; and see *Doyershoek Asbestos Mine (Pty) Ltd v Estate Snyman* [1956] 2 SA 304, SA SC App Div.

⁵ *Eckersley v Wigan Coal and Iron Co Ltd* (1910) 102 LT 264 at 269, CA, per Cozens-Hardy MR; on appeal 103 LT 468, HL.

⁶ *Wheatley v Westminster Brymbo Coal Co* (1869) LR 9 Eq 538; *Lord Abinger v Ashton* (1873) LR 17 Eq 358; and see *Moore v Ullcoats Mining Co Ltd* [1908] 1 Ch 575 at 585 per Warrington J. As to specific performance generally see SPECIFIC PERFORMANCE.

⁷ *Anon* (1754) Amb 209; *Wheatley v Westminster Brymbo Coal Co* (1869) LR 9 Eq 538. As to the remedy of injunction generally see CIVIL PROCEDURE vol 11 (2009) PARA 331 et seq.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(3) LEASES/(iii) Covenants/B. COVENANTS AS TO WORKING THE MINE/341. Covenant to sink shafts or pits.

341. Covenant to sink shafts or pits.

In the absence of a covenant to that effect, express or implied, there is no obligation upon a lessee to sink a shaft. The mere grant of a liberty to sink a pit or shaft implies no obligation to sink¹; nor, where the lessee is in a position to work from an adjoining mine² and the right to work by instroke³ is not excluded, will the inference be strengthened by the fact that it was possibly contemplated by the parties that a shaft would be sunk for the purpose of working the demised mine, and that specific liberties are conferred by the lease for that purpose and for raising and carrying away over the surface not only the minerals⁴ from the demised mines but also minerals from the land of adjoining owners⁵.

If the lease imposes an obligation to work the demised mines, the lessee will be bound to sink a shaft if no other mode of working is possible⁶, but no such obligation arises merely from a covenant to deliver up at the end of the term the mines and works in such a condition that the lessor may continue the workings⁷.

If a lessee enters into an unqualified covenant to sink a pit, he will be liable in damages if he does not sink it, even if it is known that the sinking will be fruitless⁸. The measure of damages recoverable in ordinary cases for breach of such a covenant is the cost to the lessor of sinking the pit⁹. If a covenant imposes an obligation to proceed to search for and sink for minerals as far as practicable, the lessee may be absolved from liability if he shows that his efforts and exploratory works were usual and customary in such cases¹⁰.

1 *James v Cochrane* (1852) 7 Exch 170; on appeal (1853) 8 Exch 556, Ex Ch.

2 For the meaning of 'mine' see PARA 5 ante.

3 As to instroke see PARA 330 ante.

4 For the meaning of 'minerals' see PARA 12 ante.

5 *Jegon v Vivian* (1871) 6 Ch App 742 at 755 per Lord Hatherley LC. See further PARA 329 ante.

6 *James v Cochrane* (1852) 7 Exch 170 at 178 per Pollock CB; on appeal (1853) 8 Exch 556, Ex Ch.

7 *Jegon v Vivian* (1871) 6 Ch App 742 at 756 per Lord Hatherley LC. See further PARA 329 ante.

8 *Jervis v Tomkinson* (1856) 1 H & N 195.

9 *Pell v Shearman* (1855) 10 Exch 766 at 769 per Parke B.

10 *Hanson v Boothman* (1810) 13 East 22.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(3) LEASES/(iii) Covenants/B. COVENANTS AS TO WORKING THE MINE/342. Covenants relating to pillars and barriers.

342. Covenants relating to pillars and barriers.

Under a covenant to leave, at the end of the lease, sufficient pillars for the support of the roof of the mine¹ or the surface, or for the prevention of thrusts and creeps, the duty to leave pillars does not allow the pillars to be removed provided artificial support is substituted. In this respect the lessee's obligation differs from his obligation, if it exists, to support the surface, for in this latter case the lessee may work out the minerals affording support provided artificial support is substituted².

A covenant to leave pillars for support will be enforced by injunction³, and if a lessee works pillars which he has covenanted to leave, he is liable for the damage thereby caused, whether to the surface⁴ or to the mine⁵. He must also pay for the minerals contained in the pillars, less the cost of bringing them to the surface, but without any allowance for severing⁶. A covenant to leave barriers may also be enforced by mandatory injunction⁷.

If an act is prohibited both by the general law and by covenant the lessor may avail himself of either remedy⁸.

1 For the meaning of 'mine' see PARA 5 ante.

2 See *Hodgson v Moulson* (1865) 18 CBNS 332; *Mostyn v Lancaster*, *Taylor v Mostyn* (1883) 23 ChD 583, CA; and PARAS 119, 125 ante. For the meaning of 'minerals' see PARA 12 ante.

3 *Mostyn v Lancaster*, *Taylor v Mostyn* (1883) 23 ChD 583, CA. Where there is an express contract not to work specified pillars, the right to an injunction is not affected by any question of the safety or the danger of working: *Mostyn v Lancaster*, *Taylor v Mostyn* supra.

4 *Hodgson v Moulson* (1865) 18 CBNS 332. A mandatory injunction to restore fences injured by subsidence may be obtained: *Newton v Nock* (1880) 43 LT 197. As to mandatory injunctions generally see CIVIL PROCEDURE vol 11 (2009) PARAS 332, 376 et seq.

5 *Taylor v Mostyn* (1886) 33 ChD 226, CA.

6 *Taylor v Mostyn* (1886) 33 ChD 226, CA.

7 Eg if a lessee in breach of an express covenant pierces a barrier, he will be compelled by mandatory injunction to stop up the opening: *Earl of Mexborough v Bower* (1843) 7 Beav 127; affd 2 LTOS 205. Working a barrier is waste: *Marker v Kenrick* (1853) 13 CB 188.

8 *Marker v Kenrick* (1853) 13 CB 188.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(3) LEASES/(iii) Covenants/C. OTHER COVENANTS/343. Usual covenants.

C. OTHER COVENANTS

343. Usual covenants.

In addition to the covenants to pay rent etc and as to the working of the mine¹, it is usual to insert in mining leases covenants as to repair², as to securing the mine³ against being drowned, as to compensation for surface damage⁴, as to inspection of workings by the lessor, and as to the removal of machinery during or at the end of the term. There are also usually covenants dealing with keeping and inspection of accounts, and the means by which minerals gotten are to be weighed and valued.

In the absence of agreement, a lessee is not bound to drain the demised mine, and the fact that the lessor has a right to pass through the mine does not impose an obligation on the lessee to keep it free from water, as there is no derogation from the grant⁵. Even where a lease contains a covenant not to do any act which would tend to the drowning of the mine, the court will not restrain the lessee from removing pumping machinery during the term⁶, but a covenant to pump may be enforced by an interim injunction⁷, and a covenant not to remove machinery at the end of the term will be enforced by injunction⁸.

1 See PARA 336 et seq ante.

2 The questions arising on covenants to repair are mainly questions of fact or construction: see eg *Foley v Addenbrooke* (1844) 13 M & W 174; *James v Cochrane* (1853) 8 Exch 556, Ex Ch. As to the obligation of a lessee who has covenanted to deliver up in repair see *Lurcott v Wakely and Wheeler* [1911] 1 KB 905, CA; and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 436 et seq. A covenant to repair is not specifically enforceable: see *Lord Abinger v Ashton* (1873) LR 17 Eq 358 at 376 per Jessel MR; and SPECIFIC PERFORMANCE.

3 For the meaning of 'mine' see PARA 5 ante.

4 A covenant to restore damaged surface is not specifically enforceable: *Flint v Brandon* (1803) 8 Ves 159. As to terminal compensation under a compulsory rights order for opencast working of coal see PARA 466 et seq post.

5 *Payne v Rocher Colliery Co* [1887] WN 37. In the absence of stipulation the lessor is entitled to go down the shaft to inspect the demised mine: *Lewis v Marsh* (1849) 8 Hare 97.

6 *Rolleston v New* (1858) 4 K & J 640. The lessee may, however, by removing the machinery render himself liable to an action for damages: *Rolleston v New* supra at 649 per Page Wood V-C.

7 *Goodrich v Everglyn Coal Co* [1889] WN 152. As to interim injunctions generally see CIVIL PROCEDURE vol 11 (2009) PARAS 316, 334, 383 et seq.

8 *Hamilton v Dunsford* (1857) 6 I Ch R 412. Where a lessee covenanted to deliver up at the end of the term machinery with respect to which the lessor could have given notice to purchase at any time during the term, an injunction to restrain a breach was refused as oppression: *Talbot v Ford* (1842) 13 Sim 173.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(3) LEASES/(iii) Covenants/C. OTHER COVENANTS/344. Covenants running with the land.

344. Covenants running with the land.

A covenant contained in a lease of mines and minerals¹ to erect a smelting mill on land not included in the lease has been held to run with the reversion², and covenants to make compensation for surface damage have been held to run with the land³.

1 For the meaning of 'mines and minerals' see PARA 12 ante; and for the meaning of 'mine' see PARA 5 ante.

2 *Sampson v Easterby* (1829) 9 B & C 505 at 516; affd (1830) 6 Bing 644, Ex Ch. The basis of the decision seems to have been that, on the facts, the demise of the mines was immediately connected with possession of the smelting mill. See also *Dewar v Goodman* [1909] AC 72, HL; *Ricketts v Churchwardens of Enfield* [1909] 1 Ch 544. As to covenants running with the land generally see EQUITY; LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 571.

3 *Norval v Pascoe* (1864) 34 LJ Ch 82; *Aspden v Seddon*, *Preston v Seddon* (1876) 1 Ex D 496, CA; *Dyson v Forster*, *Dyson v Seed*, *Quinn, Morgan etc* [1909] AC 98, HL; *Westhoughton UDC v Wigan Coal and Iron Co Ltd* [1919] 1 Ch 159, CA; *Snowdon v Ecclesiastical Comrs for England* [1935] Ch 181. A covenant by the lessee with 'the owner or owners, occupier or occupiers for the time being' of the surface is effectual even if the surface owners are not parties to the lease, and may be enforced by the surface owners at the time of the demise and by their successors in title: *Dyson v Forster*, *Dyson v Seed*, *Quinn, Morgan etc* supra.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(3) LEASES/(iii) Covenants/C. OTHER COVENANTS/345. Covenant for quiet enjoyment.

345. Covenant for quiet enjoyment.

If a mining lease contains no express covenant for quiet enjoyment, such a covenant will be implied by the use of the words 'demise' or 'let' or other equivalent words¹. The working of an upper stratum so as to cause falls in the demised mine is a breach of the covenant², but the working of an adjoining mine in a proper manner which unexpectedly causes flooding is not³.

Not every disappointment which a lessee meets with or experiences in the course of his enjoyment of the demised mines is a disturbance of that enjoyment within the meaning of the covenant for quiet enjoyment, but any substantial interruption of the enjoyment of the demised premises by the lessor or those claiming under him will, in general, be a breach of the covenant⁴, because it is to some extent an interference with both the title and the possession⁵.

Sometimes an act may be not only a breach of a covenant for quiet enjoyment but also wrongful as a derogation from the lessor's grant⁶.

1 *Markham v Paget* [1908] 1 Ch 697; *Mostyn v West Mostyn Coal and Iron Co* (1876) 1 CPD 145 at 152 per Brett J; and see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 508 et seq.

2 *Shaw v Stenton* (1858) 2 H & N 858; cf *Mundy v Duke of Rutland* (1883) 23 ChD 81, CA. For the meaning of 'mine' see PARA 5 ante.

3 *Harrison, Ainslie & Co v Lord Muncaster* [1891] 2 QB 680, CA; and see NUISANCE.

4 *Sanderson v Berwick-upon-Tweed Corp* (1884) 13 QBD 547, CA.

5 See *Jones v Consolidated Anthracite Collieries Ltd and Lord Dynevor* [1916] 1 KB 123 at 136, 137 per Scrutton J; cf *Morgan v Hunt* (1690) 2 Vent 213; *Spencer v Marriott* (1823) 1 B & C 457; *Dennett v Atherton* (1872) LR 7 QB 316. As to what acts constitute a breach of the covenant for quiet enjoyment see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 514.

6 *Markham v Paget* [1908] 1 Ch 697. For a case where workings were restrained as inconsistent with a prior grant see *Earl of Glasgow v Hurler and Campsie Alum Co* (1850) 3 HL Cas 25. As to the principle that a grantor must not derogate from his grant see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 58; LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 520.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(3) LEASES/(iv) Distress, Forfeiture and Determination of Tenancy/346. Distress.

(iv) Distress, Forfeiture and Determination of Tenancy

346. Distress.

Royalties, as well as a fixed or dead rent¹, may be distrained for². An express power to distrain, extending to chattels in adjoining or neighbouring mines³ in the lessee's occupation, does not constitute the lease a bill of sale⁴, and is binding upon assignees of such mines who take with notice⁵.

1 As to dead rent see PARA 333 ante.

2 *Daniel v Gracie* (1844) 6 QB 145. As to distress generally see DISTRESS vol 13 (2007 Reissue) vol 910.

3 For the meaning of 'mine' see PARA 5 ante.

4 *Re Roundwood Colliery Co, Lee v Roundwood Colliery Co* [1897] 1 Ch 373, CA; Bills of Sale Act 1878 s 6; and see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 1648, 1653.

5 *Daniel v Stepney* (1874) LR 9 Exch 185, Ex Ch.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(3) LEASES/(iv) Distress, Forfeiture and Determination of Tenancy/347. Forfeiture.

347. Forfeiture.

It is usual to insert in mining leases a power of re-entry, exercisable not only on non-payment of rent but also on breach of covenant or condition. Sometimes the power is also made exercisable in case the mine is not worked for a specified period¹, or in case the lessee becomes bankrupt or makes an arrangement with his creditors, or, being a company, goes into liquidation, receivership or administration. If a lease contains, instead of a power of re-entry, a provision that in certain events the lease is to be void the effect is the same, and the lease, on the happening of such events, will subsist until the lessor elects to determine². In either case the demand for possession should be made without undue delay³, and must be unequivocal⁴.

¹ To avoid forfeiture in such case the working must be in good faith (*Doe d Bryan v Bancks* (1821) 4 B & Ald 401), although the lessees may be given reasonable time for the restitution of the works where the lessor has continued to accept dead rent (*Whitehead v Bennett* (1861) 4 LT 818). For the meaning of 'mine' see PARA 5 ante.

² *Doe d Bryan v Bancks* (1821) 4 B & Ald 401; *Roberts v Davey* (1833) 4 B & Ad 664; *James v Young* (1884) 27 ChD 652.

³ *Bowser v Colby* (1841) 1 Hare 109. Where the delay was insufficient to deprive the lessor of the right to take proceedings, he was nevertheless compelled to allow the lessee an opportunity of putting himself in a position to comply with the covenant the breach of which was complained of: *Whitehead v Bennett* (1861) 9 WR 626.

⁴ *Moore v Ullcoats Mining Co Ltd* [1908] 1 Ch 575; *Muskett v Hill* (1839) 9 LJCP 201. As to the necessity of serving notice before re-entry, and as to relief against forfeiture see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 619 et seq.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(3) LEASES/(iv) Distress, Forfeiture and Determination of Tenancy/348. Determination of tenancy by lessee.

348. Determination of tenancy by lessee.

Some mining leases contain a clause empowering the lessee to determine the tenancy as soon as the minerals are exhausted or in some other event¹. To determine the term effectively, all conditions, such as giving notice² or the performance of covenants or otherwise, to which the exercise of the power is made subject must be strictly observed³. A power for the lessee to give notice at any time authorises him to give a notice expiring during the currency of a year⁴. A power to determine in case of accident is not exercisable on account of an accident happening before the actual date of grant of the lease but subsequent to the date expressed in the lease to be the commencement of the term⁵. If a lessee continues in possession after the expiration of the notice, it is a question of fact whether he has waived the notice and continues to hold over as tenant⁶.

Power is frequently conferred upon the lessee to determine the lease if the mines⁷ cannot be worked to a profit. Such a provision is generally accompanied by a specification of means for ascertaining by arbitration or by the opinion of experts whether it can be said of a mine at a particular time that it cannot be so worked. For the purposes of such a provision, 'profit' means gain after paying for work and labour and the rent of the mine⁸. In general, the power will only be exercisable if it can be shown that the working of the mine over a considerable period of time will prove unprofitable. A mere temporary loss of profit due to market fluctuations in the price of the produce of the mine will be insufficient to enable the lessee to avail himself of the benefit of the provision⁹.

1 As to the construction of 'fairly worked out', 'fairly workable' and 'fairly wrought' see *Jones v Shears* (1836) 7 C & P 346; *Griffiths v Rigby* (1856) 1 H & N 237; *Cartwright v Forman* (1866) 7 B & S 243; *Carr v Benson* (1868) 3 Ch App 524, CA. As to the construction of 'economically viable' see *Nocton Ltd v Water Hall Group plc* [1997] EGCS 97. For the meaning of 'minerals' see PARA 12 ante.

2 *Cartwright v Forman* (1866) 7 B & S 243.

3 *Grey v Friar* (1854) 4 HL Cas 565. However, a notice that contained a minor misdescription, served to determine a lease has been held to be valid: see *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749, [1997] 3 All ER 352, HL.

4 *Bridges v Potts* (1864) 17 CBNS 314. In such case an apportioned part of the rent is payable for the broken period: see the Apportionment Act 1870 s 2 (as amended); and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 278 et seq. As to the construction of similar powers in leases generally see LANDLORD AND TENANT.

5 *Jervis v Tomkinson* (1856) 1 H & N 195.

6 *Jones v Shears* (1836) 4 Ad & El 832, where the lessees claimed to remain in possession in pursuance of a custom. As to the tacit incorporation of usages in leases see *Tucker v Linger* (1883) 8 App Cas 508, HL; and CUSTOM AND USAGE vol 12(1) (Reissue) PARA 653. As to a case dealing with an alleged usage with reference to a quarry see *Vint v Constable* (1871) 25 LT 324.

7 For the meaning of 'mine' see PARA 5 ante.

8 *Gowan v Christie* (1873) LR 2 Sc & Div 273 at 282, HL, per Lord Cairns.

9 See *Gowan v Christie* (1873) LR 2 Sc & Div 273 at 284, HL, per Lord Cairns.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(4) LICENCES/349. Licence coupled with grant.

(4) LICENCES

349. Licence coupled with grant.

A right to work mines¹ and carry away the minerals² won is more than a mere licence³. It is a profit à prendre lying in grant⁴, which may be limited either for freehold or chattel interests⁵, and the estates so created may be devised⁶, inherited⁷ or assigned⁸. It does not convey any estate in the land or in the mines except the parts⁹ severed which become the property of the grantee¹⁰. Such a licence is irrevocable¹¹.

A licensee who has entered into possession is liable in a claim for use and occupation¹², and he may if ousted, at any rate where the licence is exclusive¹³, bring a claim to recover possession¹⁴.

1 For the meaning of 'mine' see PARA 5 ante.

2 For the meaning of 'minerals' see PARA 12 ante.

3 As to the licensing of coal-mining operations by the Coal Authority see PARA 91 et seq ante. For the meaning of 'coal-mining operations' see PARA 50 note 10 ante. As to the Coal Authority see PARA 52 et seq ante.

4 *Duke of Sutherland v Heathcote* [1892] 1 Ch 475 at 483-484, CA; see *Watson v Spratley* (1854) 10 Exch 222 at 235 per Martin B; *Re Associated Portland Cement Manufacturers Ltd's Application* [1966] 1 Ch 308 at 323, [1965] 2 All ER 547 at 555 per Buckley J; *Alfred F Beckett Ltd v Lyons* [1967] Ch 449 at 482, [1967] 1 All ER 833 at 851, CA, per Winn LJ; *T and E Homes Ltd v Robinson (Inspector of Taxes)* [1976] 3 All ER 497 at 508, [1976] 1 WLR 1150 at 1160 per Goulding J. As to profits à prendre see EASEMENTS AND PROFITS A PRENDRE. An agreement for the sale of sand and gravel to be removed from a parcel of land, although stated to be for the sale of goods, may be a grant of a profit à prendre: *Stratford v Mole and Lea* (1941) 24 TC 20.

5 *Haigh v Jaggard* (1847) 16 M & W 525 (although the court construed the deed to operate as a lease of the mine); *Martyn v Williams* (1857) 1 H & N 817. As to the effect of a grant to a grantee, his executors and administrators, without the mention of any term see *Port v Turton* (1763) 2 Wils 169; *Haigh v Jaggard* supra; *Low Moor Co v Stanley Coal Co Ltd* (1876) 34 LT 186, CA.

6 *Lord Mountjoy and Earl of Huntington's Case* (1583) Godb 17.

7 *Martyn v Williams* (1857) 1 H & N 817.

8 *Muskett v Hill* (1839) 5 Bing NC 694; *Martyn v Williams* (1857) 1 H & N 817.

9 *Norway v Rowe* (1812) 19 Ves 144 at 158 per Lord Eldon LC; *Roberts v Davey* (1833) 4 B & Ad 664; *London and North Western Ry Co v Ackroyd* (1862) 31 LJ Ch 588 at 591 per Page Wood V-C.

10 *Doe d Hanley v Wood* (1819) 2 B & Ald 724 at 739.

11 *Wood v Manley* (1839) 11 Ad & El 34; and see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 13.

12 *Jones v Reynolds* (1836) 7 C & P 335. Merely digging trial pits is not necessarily taking possession: *Jones v Reynolds* supra at 336 per Coleridge J.

13 *Wilson v Mackreth* (1766) 3 Burr 1824. As to exclusive licences see PARA 353 post.

14 *Crocker v Fothergill* (1819) 2 B & Ald 652; *Doe d Hanley v Wood* (1819) 2 B & Ald 724 at 739; *Jones v Reynolds* (1836) 4 Ad & El 805.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(4) LICENCES/350. Bare licence.

350. Bare licence.

A bare licence which does not amount to a profit à prendre, such as a licence to search for minerals¹, confers upon the grantee no property in the minerals found². The grantee has the right of possession for the purpose of examining the minerals found, and has a right of action against a third person who interferes with that possession³. A bare licence, whether granted by deed or not and whether or not for valuable consideration, is prima facie revocable⁴, but effect will be given to a term in a contractual licence providing that the licence is not to be revoked⁵. Revocation of a contractual licence in breach of such a term entitles the licensee to damages for breach of contract⁶.

1 For the meaning of 'minerals' see PARA 12 ante.

2 *Re Haven Gold Mining Co* (1882) 20 ChD 151, CA.

3 *Northam v Bowden* (1855) 11 Exch 70.

4 *Wood v Leadbitter* (1845) 13 M & W 838.

5 *Winter Garden Theatre (London) Ltd v Millennium Productions Ltd* [1948] AC 173, [1947] 2 All ER 331, HL. It does not require much to induce a court to read into an agreement of a commercial character, either by construction or by implication, a provision that the arrangements are to be terminable only upon reasonable notice: see *Australian Blue Metal Ltd v Hughes* [1963] AC 74 at 98, [1962] 3 All ER 335 at 341, PC (mining licence held terminable at will). See further CONTRACT.

6 *Smart v Jones* (1864) 15 CBNS 717; *Kerrison v Smith* [1897] 2 QB 445, DC.

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351. Form of licence.

Mining licences, coupled with a grant, must be created by deed in order to create a legal right¹, and can only be legally transferred by deed²; but a licence under hand only³, or one which is merely oral, may be effectual if the licensee incurs expense in working on the faith of it⁴.

Except so far as they differ by the omission of the demised parcels, mining licences which amount to a profit à prendre are usually made in a form similar to mining leases and contain similar covenants and provisions⁵. Covenants, for instance, to pay for surface damage⁶ and to repair⁷, run with the land in the case of such a licence as in the case of a lease.

Payments reserved in respect of a licence are in the nature of rent⁸, but they are not a true rent and cannot be distrained for⁹. It is necessary, therefore, to insert a power of distress. It is also proper and usual to insert a proviso for re-entry¹⁰.

1 *Wood v Leadbitter* (1845) 13 M & W 838; *Doe d Morgan v Powell* (1844) 8 Scott NR 687 at 701 per Tindall CJ, and at 703 per Maule J; *Watson v Spratley* (1854) 10 Exch 222 at 235 per Martin B. However, the court gives effect to equitable doctrines and the revocation of a licence coupled with a grant which should be, but is not, under seal may be restrained: see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 11; LANDLORD AND TENANT.

2 *Harker v Birkbeck* (1764) 3 Burr 1556 at 1563 per Lord Mansfield CJ; *Watson v Spratley* (1854) 10 Exch 222.

3 *Atkinson v King* (1878) 2 LR Ir 320 at 335, Ir CA, per Ball LC.

4 *Harrison v Ames* (1850) 15 LTOS 321.

5 As to the licensing of coal-mining operations by the Coal Authority see PARA 91 et seq ante. For the meaning of 'coal-mining operations' see PARA 50 note 10 ante. As to the Coal Authority see PARA 52 et seq ante.

6 *Norval v Pascoe* (1864) 34 LJ Ch 82.

7 *Martyn v Williams* (1857) 1 H & N 817. A claim for damages for breach of covenant does not pass to a purchaser of the land: *Martyn v Williams* supra. As to the different regimes before and after 1 January 1996 see the Law of Property Act 1925 s 141; and the Landlord and Tenant (Covenants) Act 1995 ss 3(1), 30(4).

8 *Re Brindley, ex p Hankey* (1829) Mont & M 247. See also *Duke of Fife's Trustees v George Wimpey & Co Ltd* 1943 SC 377.

9 See *Ward v Day* (1863) 4 B & S 337; *Re Roundwood Colliery Co, Lee v Roundwood Colliery Co* [1897] 1 Ch 373, CA; and DISTRESS vol 13 (2007 Reissue) PARA 908.

10 *Doe d Hanley v Wood* (1819) 2 B & Ald 724.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/5. DISPOSITION/(4) LICENCES/352. Construction of licences.

352. Construction of licences.

It is sometimes a matter of difficulty to decide whether a particular form of words operates to grant a licence or an estate. Each case depends on its own circumstances, and it is impossible to lay down any general rule except that words denoting liberty to work minerals¹, if unexplained by the other parts of the deed, only amount to the grant of a licence². Where the words occur by way of exception or reservation in a grant of land it is important to consider what estate in the minerals³ the person in whose favour the exception or reservation is intended to operate had before the execution of the grant. If he was legal owner of the minerals, doubtful words are more easily construed as an exception of the minerals⁴. In an instrument granting a licence the use of subsequent expressions which are only appropriate if the instrument operates as a demise of the minerals will not enlarge the words of grant⁵. Instruments may sometimes operate as a demise of the minerals for a term and as a licence for a subsequent term⁶. Difficulties arising from informal agreements can only be solved by a consideration of the circumstances of each case⁷.

1 For the meaning of 'minerals' see PARA 12 ante.

2 *Doe d Hanley v Wood* (1819) 2 B & Ald 724; *Duke of Sutherland v Heathcote* [1892] 1 Ch 475, CA; *Lord Mountjoy and Earl of Huntington's Case* (1583) Godb 17; and see *Hunts Refuse Disposals Ltd v Norfolk Environmental Waste Services Ltd* [1997] 1 EGLR 16, [1997] 03 EG 139, CA (words denoting liberty to deposit waste found to be a licence). See generally LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 6 et seq. An unenrolled bargain and sale of mines to a person, his executors and administrators, followed by possession was held to create a tenancy at will: *Low Moor Co v Stanley Coal Co Ltd* (1876) 34 LT 186, CA; but see *Haigh v Jaggard* (1847) 16 M & W 525.

3 For the meaning of 'minerals' see PARA 12 ante.

4 *Chetham v Williamson* (1804) 4 East 469 (right given to mortgagor held to amount to licence only; in considering the judgment in this case it must be remembered that minerals now lie in grant); *Duke of Hamilton v Dunlop* (1885) 10 App Cas 813, HL (right given to owner; words denoting liberty only held to amount to exception of minerals on construction of deed as a whole); *Duke of Sutherland v Heathcote* [1892] 1 Ch 475, CA (right given to donees of joint power held to amount to liberty only).

5 *Doe d Hanley v Wood* (1819) 2 B & Ald 724.

6 *Haigh v Jaggard* (1847) 16 M & W 525; *Stanley v Riky* (1893) 31 LR 196, 1r CA.

7 See eg *Re Brindley, ex p Hankey* (1829) Mont & M 247; *Daniel v Gracie* (1844) 6 QB 145; *Re Stroud and East and West India Docks and Birmingham Junction Rly Co* (1849) 8 CB 502. In these cases agreements as to getting earth and making bricks on payment of royalties were held to create tenancies from year to year or at will. In *Atkinson v King* (1878) 2 LR 1r 320, 1r CA, an agreement to allow a man to sink a pit for coal at a royalty was held to create a licence.

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353. Exclusive licences.

A licence is said to be exclusive if it is expressed to grant to the grantee the sole right to exercise the liberty granted within the defined limits. If it is not clearly so expressed, the grantor may himself exercise the same right and authorise others to do so¹, provided neither he nor they interfere with the operations of the licensee², nor deprive him of the benefits of his licence³. An exclusive licensee may maintain trespass⁴.

1 *Lord Mountjoy and Earl of Huntington's Case* (1583) Godb 17; *Chetham v Williamson* (1804) 4 East 469; *Doe d Hanley v Wood* (1819) 2 B & Ald 724; *Carr v Benson* (1868) 3 Ch App 524, CA; *Duke of Sutherland v Heathcote* [1892] 1 Ch 475, CA.

2 *Duke of Sutherland v Heathcote* [1892] 1 Ch 475, CA; *Roads v Trumpington Overseers* (1870) LR 6 QB 56.

3 *Carr v Benson* (1868) 3 Ch App 524, CA; *Newby v Harrison* (1861) 4 LT 397 (affd 4 LT 424).

4 *Harker v Birkbeck* (1764) 3 Burr 1556. As to his right to recover possession see PARA 351 ante. As to the rights of a non-exclusive licensee who has taken possession see *Doe d Hanley v Wood* (1819) 2 B & Ald 724; and PARA 349 ante. As to what acts constitute taking possession see *Carr v Benson* (1868) 3 Ch App 524, CA; and PARA 349 note 12 ante.

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354. Licensor's remedies.

The licensor's remedies are divisible into those to which he is entitled under the general law and those which he enjoys by virtue of provisions contained in the instrument granting the licence. The remedies under the general law are a claim for an account¹ and, where the licensee has actually exercised the right, a claim for use and occupation². The remedies under provisions in the licence are a claim on the covenant for payment of rent and exercise of the powers of distress if expressly provided for³, and re-entry⁴. A licence which contains a provision that in certain events it is to be void is not, upon the happening of the prescribed event, void, but voidable at the instance of the licensor⁵. Notice to determine a licence must be definite⁶. Although payments reserved under a licence cannot be distrained for, an attempt to levy a distress may be sufficient evidence of intention to waive a previous forfeiture⁷.

1 *Wright v Pitt* (1870) LR 12 Eq 408. As to claims for account generally see EQUITY.

2 *Jones v Reynolds* (1836) 4 Ad & El 805. As to claims for use and occupation generally see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 284.

3 *Ward v Day* (1863) 4 B & S 337 at 358 per Blackburn J.

4 As to these provisions see PARA 347 ante.

5 *Roberts v Davey* (1833) 4 B & Ad 664.

6 *Muskett v Hill* (1839) 5 Bing NC 694.

7 *Ward v Day* (1863) 4 B & S 337.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(1) MINERAL DEVELOPMENT/(i) Planning and the Environment/355. The minerals planning legislation.

6. RIGHT TO WORK MINERALS

(1) MINERAL DEVELOPMENT

(i) Planning and the Environment

355. The minerals planning legislation.

The town and country planning system in respect of the development¹ of land² in England and Wales is regulated by statute, principally the Town and Country Planning Act 1990, certain other consolidating Acts³, and the subordinate legislation made thereunder⁴. These statutes also contain provisions specific to minerals planning⁵. Mineral Planning Guidance Notes (MPGs) set out the government's policy on minerals and planning issues and provide guidance to local authorities, the minerals industry and others on policies and the operation of the planning system with regard to minerals⁶.

Planning permission is required for the carrying out of any development of land⁷. In relation to development consisting of the winning and working of minerals⁸ or involving the depositing of

mineral waste⁹ specified provisions¹⁰ of the Town and Country Planning Act 1990 have effect subject to such adaptations and modifications as may be prescribed¹¹. Provisions exist which relate to the review of old mineral planning permissions¹² and the periodic review of mineral planning permissions¹³.

1 For the meaning of 'development' for the purposes of the Town and Country Planning Act 1990 see s 55(1); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 217.

2 For the meaning of 'land' for the purposes of the Town and Country Planning Act 1990 see s 336(1); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 2.

3 The Planning (Listed Buildings and Conservation Areas) Act 1990 (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1072 et seq); the Planning (Hazardous Substances) Act 1990; and the Planning (Consequential Provisions) Act 1990 (TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1212 et seq). As to the consolidating Acts see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 2 et seq.

4 As to Departmental circulars and Planning Policy Guidance Notes see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 9.

5 As to mineral workings, the control of uses relating to minerals, and compensation in respect of restrictions on mineral working etc see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 710 et seq. As to the temporary stopping up of highways for working of minerals see HIGHWAYS, STREETS AND BRIDGES.

As to the ironstone restoration fund see PARA 584 et seq post. As to the suspension of certain public rights of way see PARA 415 post. As to the environmental duties in connection with planning see PARA 356 post. As to the obligations to restore land affected by coal-mining operations see PARA 357 post. As to the review of old mineral permissions and the periodic review of mineral planning permissions see generally TOWN AND COUNTRY PLANNING.

In relation to minerals, the subordinate legislation includes the Town and Country Planning (Compensation for Restrictions in Mineral Working and Mineral Waste Depositing) Regulations 1997, SI 1997/1111; the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 (as amended); and the Town and Country Planning (Minerals) Regulations 1995, SI 1995/2863 (modification of the provisions of the Town and Country Planning Act 1990).

Subject to the provisions of the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 (as amended) and the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 60-63, the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1) grants planning permission for the classes of development described as permitted development in Sch 2 (as amended) including: (1) development ancillary to mining operations (see Sch 2 Pt 19); (2) coal mining development by the Coal Authority and licensed operators (see Sch 2 Pt 20); (3) waste tipping at a mine (see Sch 2 Pt 21); (4) mineral exploration (see Sch 2 Pt 22); and (5) removal of material from mineral working deposits (see Sch 2 Pt 23). See further TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 252 et seq. As to the Coal Authority see PARA 52 et seq ante.

6 The following Mineral Planning Guidance Notes have been issued:

- 105 (1) *MPG 1: General Considerations and the Development Plan System*. This sets out the government's policy on minerals and planning issues and provides advice to mineral planning authorities and the minerals industry on policies and the operation of the planning system with regard to minerals. Mineral planning authorities must take its contents into account in preparing their development plans. The guidance may also be material to decisions on individual planning applications and appeals.
- 106 (2) *MPG 2: Applications, Permissions and Conditions*. This covers planning applications for minerals development, planning permissions and the imposition of planning conditions.
- 107 (3) *MPG 3: Coal Mining and Colliery Spoil Disposal*. This provides advice to mineral planning authorities and the coal industry on how to ensure that the development of coal resources and the disposal of colliery spoil can take place at the best balance of social, environmental and economic cost, whilst ensuring that extraction and disposal are consistent with the principles of sustainable development.
- 108 (4) *MPG 4: The Review of Mineral Working Sites*. This covers the review of mineral working sites, including the compensation implications.
- 109 (5) *MPG 5: Minerals Planning and the General Development Order*. This covers aspects of the General Development Order which are of special relevance to minerals interests.

- 110 (6) MPG 6: *Guidelines for Aggregates Provision in England*. This provides advice to mineral planning authorities and the minerals industry on how to ensure that the construction industry receives an adequate and steady supply of material at the best balance, of social, environmental and economic cost, whilst ensuring that extraction and development are consistent with the principles of sustainable development.
- 111 (7) MPG 7: *The Reclamation of Mineral Workings*. This deals with policies, consultations and conditions which are relevant to achieving effective reclamation of mineral workings.
- 112 (8) MPG 8: *Planning and Compensation Act 1991: Interim Development Order Permissions (IDOS) - Statutory Provisions and Procedures*. This sets out the procedures to be followed in applying for registration and for the determination of conditions.
- 113 (9) MPG 9: *Planning and Compensation Act 1991: Interim Development Order Permissions (IDOS) - Conditions*. This gives advice on the considerations to be taken into account by applicants and mineral planning authorities in preparing and determining the conditions to which registered permissions should be subject.
- 114 (10) MPG 10: *Provision of Raw Material for the Cement Industry*. This advises mineral planning authorities and the industry on what needs to be done to ensure that there is an adequate and continuous supply of raw material to maintain production in a manner which has full regard to the environment.
- 115 (11) MPG 11: *The Control of Noise at Surface Mineral Workings*. This advises mineral planning authorities and the industry on how the environmental performance of the industry can be improved by the control of noise from operations.
- 116 (12) MPG 12: *Treatment of Disused Mine Openings and Availability of Information on Mined Ground*. This advises local authorities, landowners, developers and others of the specific consideration which needs to be given to the problem of disused mine openings.
- 117 (13) MPG 13: *Guidelines for Peat Provision in England Including the Place of Alternative Materials*. This provides advice to mineral planning authorities and the peat extractive industry on the exercise of planning control over the extraction of peat.
- 118 (14) MPG 14: *Environment Act 1995: Review of Mineral Planning Permissions*. This gives advice to mineral planning authorities and the minerals industry on the statutory procedures to be followed and the approach to be adopted to the preparation and consideration of updated planning conditions in the review process.
- 119 (15) MPG 15: *Provision of Silica Sand in England*. This provides guidance on how an adequate and steady supply of indigenous material to the silica sand consuming industries, at a national, regional and local level, may be maintained at the best balance of social, environmental and economic cost, and provides a framework within which mineral planning authorities can develop policies for silica sand in development plans and carry out development control.

7 See the Town and Country Planning Act 1990 s 57(1). As to planning permission required for development see s 57; and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 236; as to the granting of planning permission see s 58; and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 236; and as to development orders see ss 59-61; and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 252 et seq. As to development ancillary to mining operations see the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 19; and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARAS 365-371. As to the form and content of applications for planning permission see the Town and Country Planning Act 1990 s 62; and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 448. As to the conditions imposed on a grant, revocation or modification of planning permission for development consisting of the winning and working of minerals see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 717. As to old mining permissions see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 718 et seq; and *R v North Yorkshire County Council, ex p Brown* (1998) Times, 9 February, CA (local authority required to consider an environmental assessment before determining the conditions to which an old mining permission was subject).

8 For the meanings of the 'winning and working of minerals', 'minerals' and 'mineral-working deposit' for the purposes of the Town and Country Planning Act 1990 see s 336(1) (as amended); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 16.

9 For the meaning of 'depositing of mineral waste' for the purposes of the Town and Country Planning Act 1990 see s 336(1) (as amended); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 16.

10 See the provisions specified in *ibid* Sch 16 Pts I, II (both as amended): see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 16.

11 See *ibid* s 315(1) (amended by the Planning and Compensation Act 1991 s 21, Sch 1 paras 1, 11). As to the power to modify statutory provisions in relation to minerals see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 16.

12 See the Environment Act 1995 s 96 (as amended), Sch 13 (as amended); and TOWN AND COUNTRY PLANNING.

13 See *ibid* Sch 14 (as amended); and TOWN AND COUNTRY PLANNING. As to planning permission generally see TOWN AND COUNTRY PLANNING.

UPDATE

355 The minerals planning legislation

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 5--As to the Town and Country Planning (Minerals) Regulations 1995, SI 1995/2863, see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 16.

NOTE 12--See also *Wirral BC v Brock plc* [2004] EWCA Civ 1611, [2005] 2 P & CR 318.

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356. Environmental duties in connection with planning.

Where a planning authority¹ considers any coal-mining proposals included in an application for planning permission², it must have regard to:

- 172 (1) to the desirability of the preservation of natural beauty, of the conservation of flora and fauna and geological or physiographical features of special interest and of the protection of sites, buildings, structures and objects of architectural, historic or archaeological interest³; and
- 173 (2) to the extent (if any) to which the person by whom the proposals were formulated has complied with certain requirements⁴.

1 'Planning authority' means: (1) any local planning authority within the meaning of the Town and Country Planning Act 1990; or (2) the Secretary of State in the exercise and performance of such of his powers and duties under that Act as relate to the grant of planning permission: Coal Industry Act 1994 s 53(4). As to the Secretary of State see PARA 4 ante.

2 The coal-mining proposals formulated for inclusion in so much of any application for planning permission as relates to any of the following: (1) the carrying on of any coal-mining operations; (2) the restoration of land used in connection with the carrying on of any coal-mining operations; and (3) the carrying on of any other operations incidental to any coal-mining operations or to the restoration of land which has been so used: *ibid* s 53(1). For these purposes, 'planning permission', in relation to England and Wales, has the same meaning as in the Town and Country Planning Act 1990 s 336(1) (as amended) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 43): Coal Industry Act 1994 s 53(4). As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

3 As to ancient monuments and archaeological areas see generally NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1002 et seq.

4 The requirements are: (1) to have regard, in formulating those proposals, to the desirability of the matters mentioned in the Coal Industry Act 1994 s 53(2)(a) (see head (1) in the text); and (2) to formulate proposals (as part of or in addition to the coal-mining proposals) for the adoption of such measures (if any) as it is reasonably practicable for that person to adopt for mitigating any adverse effect of the development to which the coal-mining proposals relate on the natural beauty of any area or on any such flora, fauna, features, sites, buildings, structures or objects as are so mentioned: s 53(3). For these purposes, 'development' in relation to England and Wales, has the same meaning as in the Town and Country Planning Act 1990 s 55 (as amended) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 217): Coal Industry Act 1994 s 53(4).

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357. Obligations to restore land affected by coal-mining operations.

The power of the Secretary of State¹ by a development order² to make the planning permission³ granted by any such order subject to conditions includes power, in relation to any permission to win or work any minerals⁴ in a coal mine⁵ started before 1 July 1948, to make it a condition of that permission that there is compliance with certain requirements⁶ as may be specified or described in the order⁷.

These requirements⁸ are such as the Secretary of State thinks fit in relation to: (1) the demolition or removal of any buildings⁹, plant, machinery, structures or erections used¹⁰ at any time for or in connection with any previous coal-mining operations¹¹ at that mine; and (2) the re-instatement, restoration and aftercare of any land¹² used at any time for or in connection with any previous coal-mining operations at that mine¹³.

A condition contained in a development order by virtue of these provisions¹⁴ may provide: (a) for the requirements imposed by that condition to include a requirement framed by reference to the opinion or approval of the relevant planning authority¹⁵; and (b) for that condition to be capable of being modified by agreement with the relevant planning authority¹⁶.

The Secretary of State's powers¹⁷ to modify a development order must not be exercised at any time after the end of the period of six months beginning with the restructuring date¹⁸, except for purposes which do not, in relation to any coal mine, include any of the following: (i) imposing a requirement which had not previously been imposed in relation to that coal mine; (ii) making a requirement which had been imposed in relation to that coal mine more onerous; and (iii) making provision by reference to any person's opinion or approval so as to confer powers that did not exist before and might be exercised for a purpose falling within head (i) or head (ii) above¹⁹.

1 As to the Secretary of State see PARA 4 ante.

2 For the meaning of 'development order' see the Town and Country Planning Act 1990 s 59; and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 252.

3 For the meaning of 'planning permission' see *ibid* s 336(1) (as amended); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 43. As to the granting of planning permission by development order see ss 59-61; and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARAS 252, 254.

4 As to the meaning of 'minerals' see PARA 12 note 25 ante.

5 As to the meaning of 'coal mine' see PARA 5 note 15 ante.

6 I.e. the requirements of the Coal Industry Act 1994 s 54(2): see the text and note 8-13 *infra*.

7 *Ibid* s 54(1). This provision is subject to s 54(5): see the text to note 19 *infra*.

8 I.e. those which fall within *ibid* s 54 (as amended).

9 For the meaning of 'building' see the Town and Country Planning Act 1990 s 336(1); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 2.

10 For the meaning of 'used' see *ibid* s 336(1); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 221.

11 For these purposes, 'previous coal-mining operations', in relation to the requirements imposed by any condition, means:

- 120 (1) any coal-mining operations carried on by any person before 1 July 1948; or
- 121 (2) any coal-mining operations which:
- 12. (a) were carried on by any person at any time on or after that date but before the coming into force of that condition; and
12
- 13. (b) were operations constituting development for which planning permission was granted by a development order or any corresponding order made, or having effect as if made, under any enactment then in force,
13

and references in the Coal Industry Act 1994 s 54 (as amended) to the use of anything in connection with any such operations include references to its use for or in connection with activities carried on in association with, or for purposes connected with, the carrying on of those operations: see s 54(3). As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante. For the meaning of 'enactment' see the Town and Country Planning Act 1990 s 336(1); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 2.

12 For the meaning of 'land' see *ibid* s 336(1); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 2.

13 Coal Industry Act 1994 s 54(2).

14 *Ie* by virtue of *ibid* s 54 (as amended).

15 For these purposes, 'relevant planning authority', in relation to England and Wales, means the mineral planning authority within the meaning of the Town and Country Planning Act 1990: see the Coal Industry Act 1994 s 54(7).

16 *Ibid* s 54(4).

17 *Ie* under *ibid* s 54 (as amended).

18 *Ie* 31 October 1994: see PARA 3 note 9 ante.

19 Coal Industry Act 1994 s 54(5). However, this does not affect the continuing effect after the end of that period of any modification made after the passing of the Coal Industry Act 1994 (*ie* 5 July 1994) and before the end of that period: s 54(5) proviso. As to the meaning of 'modifications' see PARA 50 note 4 ante. Expressions used in s 54 (as amended) and in the Town and Country Planning Act 1990 have, in the application of the Coal Industry Act 1994 s 54 (as amended) to England and Wales, the same meanings in s 54 (as amended) as in the Town and Country Planning Act 1990: see the Coal Industry Act 1994 s 54(6).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(1) MINERAL DEVELOPMENT/(i) Planning and the Environment/358. Facilities for the Natural Environment Research Council.

358. Facilities for the Natural Environment Research Council.

Before any person sinks, for the purpose of searching for or getting any minerals¹, a shaft or borehole intended to reach a depth of more than 30.480 metres below the surface, he must give the Natural Environment Research Council written notice of his intention to do so². He must keep a journal of any such sinking and retain for a period of not less than six months such specimens of the strata passed through as may have been obtained in the course of the sinking, either as cores or fragments, and must allow the Council, or any officer appointed by the Council³, to have free access at all reasonable times to any such shaft, borehole or core, to inspect and take copies of the journals of such shafts or boreholes, to inspect all specimens so obtained and kept, and to take representative specimens of any such cores⁴.

The owner or manager of every mine must allow the Council or any officer appointed by it to have free access at all reasonable times to all underground workings, and must supply to the Council or to any such officer such information and such specimens of seams or strata sunk through or opened out at the mine as may be reasonably required by the Council⁵.

If any person sinking any shaft or borehole, or the owner or manager of any mine fails to comply with any obligation imposed on him by these requirements⁶, he is, in respect of each offence, liable on summary conviction to a fine not exceeding level 3 on the standard scale⁷. If the person sinking any shaft or borehole gives notice in writing to the Council requiring it to treat as confidential any copies of journals or specimens so taken by the Council or by any officer appointed by it, the Council must not allow those copies or specimens to be published or shown to any person not being an officer of the Council, except with the consent of the person sinking such shaft or borehole⁸. If, however, at any time the Council give notice to any person from whom such consent is required that, in its opinion, his consent is unreasonably withheld, then that person may, within three months after such notice is given, appeal to the High Court⁹. If at the expiration of that period no such appeal is made, or if after hearing the appeal the High Court does not make an order restraining it from doing so, the Council may proceed as if such consent had been given¹⁰.

1 As to the meaning of 'minerals' see PARA 12 note 19 ante.

2 See the Mining Industry Act 1926 s 23(1) (amended by the Science and Technology Act 1965 s 3(5), Sch 2; and the Mining Industry Act 1926 (Metrication) Regulations 1991, SI 1991/2531, reg 2). As to the Natural Environment Research Council see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 970.

3 Any officer appointed by the Council has the same rights as to the production and inspection of plans, sections and drawings which, by or by virtue of the Mines and Quarries Act 1954 are required to be kept, as are by that Act conferred on inspectors, and that Act applies accordingly: Mining Industry Act 1926 s 23(5) (substituted by the Mines and Quarries Act 1954 s 188, Sch 4; and amended by the Science and Technology Act 1965 Sch 2). As to the powers of inspectors see the Health and Safety at Work etc Act 1974 s 20; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 376.

4 See the Mining Industry Act 1926 s 23(1) (amended by the Science and Technology Act 1965 Sch 2).

5 Mining Industry Act 1926 s 23(3) (amended by the Mines and Quarries Act 1954 s 188, Sch 4; and the Science and Technology Act 1965 Sch 2).

6 ie by the Mining Industry Act 1926 s 23(1)-(3) (as amended) (see the text to notes 1-5 supra).

7 See *ibid* s 23(4) (amended by the Mines and Quarries Act 1954 s 188, Sch 4; and the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 98 note 12 ante.

8 See the Mining Industry Act 1926 s 23(2) (amended by the Science and Technology Act 1965 Sch 2).

9 See the Mining Industry Act 1926 s 23(2) proviso (amended by the Railway and Canal Commission (Abolition) Act 1949 s 1(1)(a); and the Science and Technology Act 1965 Sch 2). As to the High Court procedure see PARA 398 post.

10 See the Mining Industry Act 1926 s 23(2) proviso (as amended: see note 9 supra).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(1) MINERAL DEVELOPMENT/(ii) Miscellaneous Provisions/359. Taxation.

(ii) Miscellaneous Provisions

359. Taxation.

The taxation of mines, quarries and mineral rights is dealt with elsewhere in this work¹. The Coal Industry Act 1994 makes specific provision in relation to the taxation effects of restructuring of the coal industry², and the financial structure of successor companies³.

1 As to income tax and corporation tax see INCOME TAXATION vol 23(1) (Reissue) PARAS 45 et seq, 835 et seq. As to capital gains tax see CAPITAL GAINS TAXATION. As to value added tax see VALUE ADDED TAX. As to petroleum revenue tax and oil taxation see OIL AND GAS TAXATION vol 78 (2010) PARA 301 et seq. As to profits or gains arising out of land as in the case of mines, quarries and similar concerns see INCOME TAXATION vol 23(1) (Reissue) PARA 127 et seq. As to exceptions from the charge to tax see INCOME TAXATION vol 23(1) (Reissue) PARA 48. As to mineral extraction see INCOME TAXATION vol 23(1) (Reissue) PARA 419 et seq. As to balancing charges and balancing allowances see INCOME TAXATION vol 23(1) (Reissue) PARA 426 et seq.

2 See the Coal Industry Act 1994 s 21, Sch 4 (as amended); and PARA 73 note 29 ante.

3 See ibid s 15, Sch 3; and PARA 75 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(1) MINERAL DEVELOPMENT/(ii) Miscellaneous Provisions/360. Control of prices of minerals.

360. Control of prices of minerals.

Prices for the sale of coal¹ are subject to the provisions of the ECSC Treaty², which include powers for the Commission of the European Communities to fix prices³.

1 As to the meaning of 'coal' for these purposes see the Treaty establishing the European Coal and Steel Community (Paris, 18 April 1951; TS 16 (1979); Cmnd 7461), Annex I.

2 See *ibid* arts 60-64.

3 See *ibid* art 61.

UPDATE

TEXT AND NOTES--By virtue of art 97, the ECSC Treaty has now expired. Since 24 July 2002, the sectors previously covered by this Treaty, and the procedural rules and other secondary legislation derived from it, have been subject to the rules of the EC Treaty as well as the procedural rules and other secondary legislation derived from the EC Treaty.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(1) MINERAL DEVELOPMENT/(ii) Miscellaneous Provisions/361. Regional development grants.

361. Regional development grants.

The Secretary of State¹ may, in accordance with the Industrial Development Act 1982², make a grant to a person in respect of the carrying out of a project of investment in the productive capacity or productive processes of an undertaking in a development area³. However, by virtue of the Regional Development Grants (Termination) Act 1988, no such grants are payable after 31 March 1988⁴, except where application for approval of a project was received on or before that date⁵.

1 As to the Secretary of State see PARA 4 ante.

2 Ie in accordance with the Industrial Development Act 1982 Pt II (ss 2-6) (as substituted).

3 See *ibid* s 2(1) (s 2 substituted by the Co-operative Development Agency and Industrial Development Act 1984 s 5(1), Sch 1 Pt I).

4 See the Regional Development Grants (Termination) Act 1988 s 1(1).

5 See *ibid* s 1(2). As to the preclusion of the power of the Secretary of State to make regional development grants see the Regional Development Grants (Termination) Act 1988.

UPDATE

361 Regional development grants

TEXT AND NOTES--Repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(1) MINERAL DEVELOPMENT/(ii) Miscellaneous Provisions/362. Mining consultants etc.

362. Mining consultants etc.

The right of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in mining and quarrying¹, in prospecting and drilling for petroleum and natural gas² and in the coal trade³ is provided for by directives of the Council of the European Communities.

1 See EC Council Directive 64/428 (OJ L117, 22.7.64, p 1871; S edn 1963-64 p 151).

2 See EC Council Directive 69/82 (OJ L68, 19.3.69, p 4; S edn 1969(I) p 111).

3 See EC Council Directive 70/522 (OJ L267, 11.12.70, p 14; S edn 1970(III) p 831); and EC Council Directive 70/523 (OJ L267, 11.12.70, p 18; S edn 1970(III) p 835).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(2) RIGHTS APART FROM STATUTE/(i) Absolute Owners/363. Rights of working.

(2) RIGHTS APART FROM STATUTE

(i) Absolute Owners

363. Rights of working.

A tenant in fee simple may work mines¹ and dispose of the produce as he pleases, even though subject to an executory limitation over². So, too, may a tenant in tail in possession, for he may at any time convert his tenancy in tail into an estate in fee simple³. Mines belonging to a mentally disordered person who is incapable of managing his property and affairs may be worked by his receiver under the direction of the court⁴; and special rules apply to ecclesiastical property⁵. Statutory companies, although they may be authorised to acquire mines, have no power to work them unless such power is expressly or impliedly conferred on them by the legislature⁶.

1 For the meaning of 'mine' see PARA 5 ante.

2 See *Turner v Wright* (1860) 2 De GF & J 234; *Re Hanbury's Settled Estates* [1913] 2 Ch 357. As to the nature of executory limitations see generally REAL PROPERTY.

On the restructuring date (31 October 1994: see PARA 3 note 9 ante) the exclusive right of searching for, boring for, working and getting coal in Great Britain, placed on the British Coal Corporation (formerly the National Coal Board) ceased, and the Corporation's interests in unworked coal and coal mines vested in the Coal Authority: see the Coal Industry Act 1994 s 7(2), (3); and PARA 67 ante. As to the British Coal Corporation see PARAS 2-3 ante; and as to the Coal Authority see PARA 52 et seq ante. For the meaning of 'Great Britain' see PARA 1 note 1 ante.

3 See *A-G v Duke of Marlborough* (1818) 3 Madd 498 at 532, 535. Under the law before 1926 the guardian of a tenant in tail who was a minor could exercise the right of working incident to the minor's estate: *Lyddal v Clavering* (1741) Amb 371n. As to minors' interests in land generally see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 30 et seq.

4 *Ex p Tabbart* (1801) 6 Ves 428; and see MENTAL HEALTH.

5 See ECCLESIASTICAL LAW.

6 *Ecclesiastical Comrs for England v North Eastern Rly Co* (1877) 4 ChD 845; *Glasgow Corpn v Farie* (1888) 13 App Cas 657 at 697, HL, per Lord Macnaghten; and see also *A-G v Great Northern Rly Co* (1860) 1 Drew & Sm 154; and CORPORATIONS vol 9(2) (2008 Reissue) PARA 1223 et seq.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(2) RIGHTS APART FROM STATUTE/(i) Absolute Owners/364. Rights where ownership severed.

364. Rights where ownership severed.

If the ownership of the mines¹ is severed from that of the surface, the owner of the mines has absolute powers of using as he may think fit the empty space from which minerals² have been worked (subject only to any statutory or common law restriction to the contrary)³; and, where for the purpose of properly working mines excepted from a grant, roads have been extended into the adjoining strata, such owner is entitled to use the roads for any purpose⁴. If the ownership of minerals only is severed, the owner of the minerals has no power to use the empty space except for the purpose of getting the remaining minerals⁵.

1 For the meaning of 'mine' see PARA 5 ante.

2 For the meaning of 'minerals' see PARA 12 ante.

3 *Proud v Bates* (1865) 34 LJ Ch 406; *Duke of Hamilton v Graham* (1871) LR 2 Sc & Div 166; *Great Western Rly Co v Cefn Cribbwr Brick Co* [1894] 2 Ch 157 at 165 per Kekewich J.

4 *Batten Pooll v Kennedy* [1907] 1 Ch 256.

5 *Ramsay v Blair* (1876) 1 App Cas 701, HL.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(2) RIGHTS APART FROM STATUTE/(i) Absolute Owners/365. Rights pending completion of sale.

365. Rights pending completion of sale.

As the purchaser is in equity the owner of the property comprised in a contract for sale from the date of the contract, the vendor, after the date of the contract, must not do anything to diminish its value¹. If, therefore, a vendor delays completion and continues to work a mine² or quarry³ for his own benefit, he is liable for so doing⁴. However, if the mine or quarry is open⁵, the vendor may continue to work, or, if the property is leased, to receive the royalties, and to retain the proceeds of such working or the royalties, as ordinary rents and profits, during the period between the date of the contract and that fixed for completion⁶ in the absence of any contrary stipulation in the contract of sale.

1 *Clarke v Ramuz* [1891] 2 QB 456 at 462, CA, per Kay LJ. See also SALE OF LAND vol 42 (Reissue) PARA 180 et seq.

2 For the meaning of 'mine' see PARA 5 ante.

3 For the meaning of 'quarry' see PARA 6 ante.

4 *Nelson v Bridges* (1839) 2 Beav 239 at 243 per Lord Langdale MR, where the vendor was held liable for the damage sustained by the defendant in his business as a stone dealer; *Brown v Dibbs* (1877) 25 WR 776, PC, where the vendor was held liable for the market value of the coal got, less the cost of severance and conveyance to the place of sale.

5 As to open mines see PARA 7 et seq ante.

6 *Leppington v Freeman* (1891) 66 LT 357, CA. See also SALE OF LAND vol 42 (Reissue) PARA 189 et seq. As to the liability of a purchaser who works the minerals before completion see PARA 303 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(2) RIGHTS APART FROM STATUTE/(ii) Co-owners/366. Possible relations between co-owners.

(ii) Co-owners

366. Possible relations between co-owners.

Persons jointly interested in a mine¹ or quarry² may be legally related to each other in three different ways:

- 174 (1) they may be merely co-owners of the property³; or
- 175 (2) they may be co-owners of the property and partners in working it⁴; or
- 176 (3) they may form a partnership, the mine or quarry itself being the partnership property⁵.

1 For the meaning of 'mine' see PARA 5 ante.

2 For the meaning of 'quarry' see PARA 6 ante.

3 See PARA 367 post.

4 See PARA 368 post.

5 See PARA 369 post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(2) RIGHTS APART FROM STATUTE/(ii) Co-owners/367. Co-owners of the property only.

367. Co-owners of the property only.

Land held in co-ownership may be the subject either of a joint tenancy or of a tenancy in common. However, the only concurrent interest in land capable of existing at law is a joint tenancy; tenancies in common exist in equity only¹. Where a legal estate (not being settled land) is held by joint tenants it is held in trust², but not so as to sever the joint tenancy in equity³.

In the case of mines⁴ to which persons are entitled as co-owners, each co-owner is entitled to enter and work provided he does not take more than his share or work wastefully⁵. If he takes more than his share he may be made liable in a claim for an account⁶, but in such a claim he will be allowed the costs of severing the minerals⁷ and bringing them to bank⁸. If there has been actual ouster, the person excluded may recover mesne profits⁹. In case of disagreement a receiver or manager will not be appointed, as this would involve working under the supervision of the court for an indefinite period¹⁰. In taking an account, one co-owner of a mine or quarry¹¹ who has worked with the consent of the others will be given allowances for necessities¹². Any co-owner may assign his share without the consent of the others¹³, but a sale of the legal estate in the mine or any part of it must be carried out by the trustees in whom the legal estate is vested¹⁴. The trustees have a power to partition¹⁵.

1 See the Law of Property Act 1925 ss 1(6), 34(1), 36(2) (as amended); and REAL PROPERTY vol 39(2) (Reissue) PARAS 38, 198 et seq, 211. The legal estate is held in trust for the persons interested in the land: see s 34(2) (as amended); and REAL PROPERTY vol 39(2) (Reissue) PARA 211.

2 ie as if the persons beneficially entitled were tenants in common: see note 1 supra.

3 See the Law of Property Act 1925 s 36(1) (as amended); and REAL PROPERTY vol 39(2) (Reissue) PARA 190.

4 For the meaning of 'mine' see PARA 5 ante.

5 *Job v Potton* (1875) LR 20 Eq 84. See also *Glyn v Howell* [1909] 1 Ch 666 at 677 per Eve J; *Wilkinson v Haygarth* (1847) 12 QB 837 (on appeal (1848) 12 QB 851, Ex Ch).

6 *Denys v Shuckburgh* (1840) 4 Y & C Ex 42; *Bentley v Bates* (1840) 4 Y & C Ex 182; *Re Smith (a lunatic)* (1874) 10 Ch App 79; *Adair v New River Co Ltd and Metropolitan Water Board* (1908) 25 TLR 193 at 196, CA, per Farwell LJ (affd sub nom *Metropolitan Water Board v Adair and New River Co* (1911) 27 TLR 253, HL).

On an application for an order under the Trusts of Land and Appointment of Trustees Act 1996 s 14 (see TRUSTS vol 48 (2007 Reissue) PARA 1038) the court may make any such order relating to the exercise by the trustees of any of their functions (including an order relieving them of any obligation to obtain the consent of, or to consult, any person in connection with the exercise of any of their functions), or declaring the nature or extent of a person's interest in property subject to the trust, as the court thinks fit: see s 14(2). As to the rights of a beneficiary under a trust see generally TRUSTS.

7 For the meaning of 'minerals' see PARA 12 ante.

8 *Roberts v Eberhardt* (1853) Kay 148.

9 *Denys v Shuckburgh* (1840) 4 Y & C Ex 42.

10 *Roberts v Eberhardt* (1853) Kay 148; cf *Jefferys v Smith* (1820) 1 Jac & W 298. If necessary an interim receiver and manager will be appointed where the mine has been worked in partnership and the partnership has been dissolved and the mine ordered to be sold: *Lees v Jones* (1857) 3 Jur NS 954.

11 For the meaning of 'quarry' see PARA 6 ante.

12 *Scott v Nesbitt* (1808) 14 Ves 438. In this respect the rights of a co-owner of a mine or quarry are more favourable than those of co-owners of other types of property: see *Scott v Nesbitt* supra.

13 *Bentley v Bates* (1840) 4 Y & C Ex 182 at 186, 191 per Lord Abinger CB.

14 As to the general power of trustees see the Trusts of Land and Appointment of Trustees Act 1996 s 6 (as amended); and SETTLEMENTS. As from 1 January 1997 no new settlements can be created under the Settled Land Act 1925. As to the phasing out of strict settlements and the introduction of the 'trust of land' see the Trusts of Land and Appointment of Trustees Act 1996 s 2(1); and PARA 285 note 2 ante.

15 The trustees of land may, where beneficiaries of full age are absolutely entitled in undivided shares to land subject to the trust, partition the land, or any part of it, and provide (by way of mortgage or otherwise) for the payment of any equality money (ibid s 7(1)). See further REAL PROPERTY. See also *Re Thomas, Thomas v Thompson* [1930] 1 Ch 194; *Re Brooker, Public Trustee v Young* [1934] Ch 610 (discussing similar provision made by the Law of Property Act 1925 s 28(3) (repealed)). On an application for an order under the Trusts of Land and Appointment of Trustees Act 1996 s 14 (see TRUSTS vol 48 (2007 Reissue) PARA 1038) the court may make an order relieving the trustees of any obligation to obtain the consent of any person in connection with the exercise of any of their functions: see s 14(2). As to the power of the court to authorise dealings with trust property see the Trustee Act 1925 s 57; and *Re Beale's Settlement Trusts, Huggins v Beale* [1932] 2 Ch 15. See further EQUITY; REAL PROPERTY; TRUSTS.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(2) RIGHTS APART FROM STATUTE/(ii) Co-owners/368. Co-owners of the property and partners in the profits.

368. Co-owners of the property and partners in the profits.

All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in the Partnership Act 1890 partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement¹.

However, co-ownership of land does not of itself create a partnership, whether or not the tenants share the profits², and where mines³ are held in co-ownership the co-owners may constitute themselves partners in the business enterprise without the land and minerals⁴ becoming partnership property⁵.

In such circumstances⁶ each partner is entitled to take part in the working so long as he works properly and does not obstruct or interfere with the others⁷; and he may maintain an action for an account against the others without seeking a dissolution⁸, but if a dissolution is not sought a receiver or manager will not in general be appointed⁹. However, if dissolution is asked for, a receiver will be appointed on an interim application, provided the applicant shows exclusion or interference¹⁰. Each partner who has incurred expense in working or preserving the mine is entitled to be recouped out of profits before any division is made¹¹. If one partner becomes indebted to the partnership the others will have a lien on his share for the amount of that indebtedness¹². Each partner may transfer his equitable interest in the mine without the consent of the other owners¹³.

If two tenants in common of a mine at their joint expense construct a shaft on land belonging to one of them, money paid by a stranger as wayleave belongs to both¹⁴.

1 Partnership Act 1890 s 20(1); see *Crawshay v Collins* (1808) 15 Ves 218; and PARTNERSHIP vol 79 (2008) PARAS 116, 119.

2 See *ibid* s 2(1); and PARTNERSHIP vol 79 (2008) PARA 10. See also *Fereday v Wightwick* (1829) 1 Russ & M 45 (mines leased and worked as a partnership).

3 For the meaning of 'mine' see PARA 5 ante.

4 For the meaning of 'minerals' see PARA 12 ante.

5 *Steward v Blakeway* (1869) 4 Ch App 603; *Davis v Davis* [1894] 1 Ch 393 at 401-402 per North J (although in that case no land was acquired by the partners); and see PARTNERSHIP vol 79 (2008) PARA 118. Where co-owners of an estate or interest in any land, or in Scotland of any heritable estate, not being itself partnership property, are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land or estate first mentioned at the date of the purchase: Partnership Act 1890 s 20(3); and see PARTNERSHIP vol 79 (2008) PARA 118.

6 See the text to note 5 supra.

7 *Jefferys v Smith* (1820) 1 Jac & W 298; *Roberts v Eberhardt* (1853) Kay 148.

8 *Bentley v Bates* (1840) 4 Y & C Ex 182.

9 See *Roberts v Eberhardt* (1853) Kay 148; and PARTNERSHIP vol 79 (2008) PARA 163; RECEIVERS.

- 10 *Roberts v Eberhardt* (1853) Kay 148; *Lees v Jones* (1857) 3 Jur NS 954.
- 11 *Roberts v Eberhardt* (1853) Kay 148.
- 12 *Fereday v Wightwick* (1829) 1 Russ & M 45; *Crawshay v Maule* (1818) 1 Swan 495.
- 13 See PARA 369 post; and *Bentley v Bates* (1840) 4 Y & C Ex 182.
- 14 *Clegg v Clegg* (1861) 3 Giff 322.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(2) RIGHTS APART FROM STATUTE/(ii) Co-owners/369. Partners in the property and in the profits.

369. Partners in the property and in the profits.

If co-owners are partners both in the mine¹ and in the profits their relations generally are regulated by the law of partnership².

Each partner is entitled to take part in the working so long as he acts with due regard to the rights of the other partners³, and each may bind the others by incurring debts for wages, goods and supplies necessary for carrying on the mine⁴, but not by drawing, making, accepting or indorsing bills of exchange or promissory notes⁵ (which are not governed by the same rules as ordinary contracts not under seal). A partner is entitled to be repaid money advanced by him for the purpose of carrying on the business⁶, but it seems that, in the absence of express authority, a partner in a mining partnership is not entitled to borrow money on the credit of the partnership⁷.

All proper expenses in working or preserving the mine ought to be deducted from the profits before any division is made⁸, and each partner is liable to contribute in case of loss⁹, unless the loss is caused by the improper conduct of some members of the partnership¹⁰.

A partner may transfer his share either absolutely or by way of mortgage, but the rights of the transferee will be those of an equitable part owner, including the right to an account, and not those of a partner¹¹, unless by express or tacit agreement he is accepted as a partner by the other partners¹². A mortgagee may enforce his security by foreclosure, and in a claim for foreclosure he may obtain an account as at the date of the issue of the writ, but he may not contest any dealings with capital or profits or object to the management of the mine before that date¹³. If a person who is a mortgagee of a share becomes also a partner, his rights as mortgagee will be modified by the obligations he assumes toward the other partners¹⁴. Although a purchaser may not be accepted as a partner the purchaser as cestui que trust is personally bound to indemnify the vendor as trustee from the liabilities of the trust property¹⁵.

Any partner in a claim for dissolution, and in some special cases without asking for dissolution¹⁶, is entitled on interim application to the appointment of a receiver and manager if he can show mismanagement or exclusion¹⁷.

1 For the meaning of 'mine' see PARA 5 ante.

2 As to the law of partnership generally see PARTNERSHIP.

3 *Rowe v Wood* (1822) 2 Jac & W 553; *Roberts v Eberhardt* (1853) Kay 148. As to the duty of partners to render accounts, etc see the Partnership Act 1890 s 28; and PARTNERSHIP vol 79 (2008) PARA 135.

4 *Re German Mining Co, ex p Chippendale* (1853) 4 De GM & G 19. As to the power of partners to bind the firm see the Partnership Act 1890 s 5; and PARTNERSHIP vol 79 (2008) PARA 45.

5 *Ducarrey v Gill* (1830) Mood & M 450; *Bentley v Bates* (1840) 4 Y & C Ex 182 at 191 per Lord Abinger CB; *Thicknesse v Bromilow* (1832) 2 Cr & J 425; *Brown v Byers* (1847) 16 LJ Ex 112; and see *Bottomley v Nuttall* (1858) 5 CBNS 122. A partner who signs a bill on behalf of the partnership is personally liable on it: *Brown v Byers* supra. As to acquiescence by a partner see *Harrison v Heathorn* (1843) 12 LJCP 282. As to partners bound by acts on behalf of the firm see the Partnership Act 1890 s 6; and PARTNERSHIP vol 79 (2008) PARA 58. As to signature essential to liability see the Bills of Exchange Act 1882 s 23(2).

6 *Re German Mining Co, ex p Chippendale* (1853) 4 De GM & G 19. If one partner becomes indebted to the partnership, the others have a lien on his share for the amount of the debt: see PARA 368 text to note 9 ante.

7 *Burmester v Norris* (1851) 21 LJ Ex 43; *Ducarrey v Gill* (1830) Mood & M 450; *Re German Mining Co, ex p Chippendale* (1853) 4 De GM & G 19; *Brown v Kidger* (1858) 28 LJ Ex 66. These cases all were decided on the principle that borrowing is not strictly necessary for business. It is submitted that the continued application of that principle to a similar case may be considered doubtful considering the significant capital requirements of mining.

8 *Roberts v Eberhardt* (1853) Kay 148.

9 *Re German Mining Co, ex p Chippendale* (1853) 4 De GM & G 19.

10 *Thomas v Atherton* (1878) 10 ChD 185, CA. 'Prima facie, damages given against one partner for a partnership act are to be paid like any other partnership debt, but with this exception, that if the damages were occasioned by the personal misconduct or culpable negligence of one partner, he alone must bear the consequences': *Thomas v Atherton* supra at 199 per James LJ.

11 *Bentley v Bates* (1840) 4 Y & C Ex 182; *Redmayne v Forster* (1866) LR 2 Eq 467; and see the Partnership Act 1890 s 31; and MORTGAGE vol 77 (2010) PARA 166.

12 See *Jefferys v Smith* (1827) 3 Russ 158; *Crawshay v Maule* (1818) 1 Swan 495.

13 *Redmayne v Forster* (1866) LR 2 Eq 467, where, as the other partners had a right of pre-emption, it was held that they were necessary parties to the action for foreclosure.

14 *Rowe v Wood* (1822) 2 Jac & W 553.

15 *Dodson v Downey* [1901] 2 Ch 620 at 623 per Farwell J.

16 Eg on the ground of danger to the property: see *Sheppard v Oxenford* (1855) 1 K & J 491.

17 *Roberts v Eberhardt* (1853) Kay 148; and see *Hall v Hall* (1850) 3 Mac & G 79 (where the appointment of a receiver and manager was refused). As to powers of the High Court with respect to injunctions and receivers see the Supreme Court Act 1981 s 37; and CIVIL PROCEDURE vol 11 (2009) PARA 340 et seq; RECEIVERS vol 39(2) (Reissue) PARA 313 et seq. As to remedies available in county courts see the County Courts Act 1984 s 38 (substituted by the Courts and Legal Services Act 1990 s 3); and COURTS vol 10 (Reissue) PARA 711.

UPDATE

369 Partners in the property and in the profits

NOTE 17--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(2) RIGHTS APART FROM STATUTE/(ii) Co-owners/370. Effect of laches.

370. Effect of laches.

Having regard particularly to the speculative nature of mining property, a person claiming to assert an equitable right with regard to such property, as to a share in a renewed lease¹, must apply for relief promptly, otherwise he will be refused on the ground of laches². However, this rule is not applicable if the applicant has been refused information necessary to enable him to decide what course to adopt³.

Laches is not, however, sufficient to bar a legal right⁴. Abandonment must be shown⁵, but abandonment has been presumed from a delay amounting to six years⁶.

1 A partner renewing in his own name a lease of the partnership is a trustee of the new lease for the partnership: *Featherstonhaugh v Fenwick* (1810) 17 Ves 298; *Clegg v Fishwick* (1849) 1 Mac & G 294; *Clegg v Edmondson* (1857) 8 De GM & G 787; *Clements v Hall* (1858) 2 De G & J 173; and see PARTNERSHIP vol 79 (2008) PARAS 109, 116 et seq.

2 *Senhouse v Christian* (1795) 19 Beav 356n; *Norway v Rowe* (1812) 19 Ves 144; *Prendergast v Turton* (1841) 1 Y & C Ch Cas 98 (affd (1843) 13 LJ Ch 268); *Clegg v Edmondson* (1857) 8 De GM & G 787; and see *Nelson v Rye* [1996] 2 All ER 186. The court is likely to take into account the considerable expenditure involved (*Senhouse v Christian* supra) even where the mining operation is self-financing (*Clegg v Edmondson* supra).

3 *Clements v Hall* (1858) 2 De G & J 173.

4 *Clarke and Chapman v Hart* (1858) 6 HL Cas 633; and see *Kershaw v Whelan (No 2)* (1997) 141 Sol Jo LB 37.

5 *Clarke and Chapman v Hart* (1858) 6 HL Cas 633; *Palmer v Moore* [1900] AC 293, PC.

6 *Rule v Jewell* (1881) 18 ChD 660; and see EQUITY.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(2) RIGHTS APART FROM STATUTE/(iii) Limited Owners/371. Working of mines and waste.

(iii) Limited Owners

371. Working of mines and waste.

The rights of limited owners are governed by the doctrine of waste¹. Prima facie, working new or unopened mines or quarries² is waste, but working open mines is not waste: it is enjoyment of the profits of the estate³. The right to commit waste is not incident to the equitable interest of a tenant for life⁴ or the estate of a tenant for years⁵. Consequently, in the absence of express provision contained in the instrument under which their interests arise, tenants for life⁶ and tenants for years⁷ may work open mines, but may not dig in new mines except for the purposes of repairs, improvements or the like⁸.

As from 1 January 1997 no new settlements can be created under the Settled Land Act 1925⁹.

1 Co Litt 53b. As to waste see generally LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 431 et seq; SETTLEMENTS.

2 As to whether a mine is open or unopen see *Chaytor v Trotter* (1902) 87 LT 33, CA. For the meaning of 'mine' see PARA 5 ante; and for the meaning of 'quarry' see PARA 6 ante. As to open mines see PARA 7 et seq ante.

3 Co Litt 54b; *Campbell v Wardlaw* (1883) 8 App Cas 641 at 645, HL, per Lord Blackburn, and at 650 per Lord Watson; *Dashwood v Magniac* [1891] 3 Ch 306 at 327, CA, per Chitty J, at 360-361 per Bowen LJ, and at 384-385 per Kay LJ, dissenting.

4 Co Litt 54b; *Whitfield v Bewit* (1724) 2 P Wms 240; *Viner v Vaughan* (1840) 2 Beav 466.

5 Co Litt 54b; *Saunders's Case* (1599) 5 Co Rep 12a; *Clegg v Rowland* (1866) LR 2 Eq 160; *Elias v Snowdon Slate Quarries Co* (1879) 4 App Cas 454, HL. It is immaterial that the term is of great duration: see *Elias v Griffith* (1878) 8 ChD 521, CA.

6 *Saunders's Case* (1599) 5 Co Rep 12a; *Clavering v Clavering* (1726) 2 P Wms 388; *Campbell v Leach* (1775) Amb 740; *Viner v Vaughan* (1840) 2 Beav 466; *Dickin v Hamer* (1860) 1 Drew & Sm 284; *Bagot v Bagot*, *Legge v Legge* (1863) 32 Beav 509; *Campbell v Wardlaw* (1883) 8 App Cas 641, HL; *Dashwood v Magniac* [1891] 3 Ch 306, CA.

7 *Saunders's Case* (1599) 5 Co Rep 12a; *Astry v Ballard* (1677) 2 Mod Rep 193; *Clegg v Rowland* (1866) LR 2 Eq 160; *Elias v Snowdon Slate Quarries Co* (1879) 4 App Cas 454, HL.

8 Co Litt 53b.

9 As to the phasing out of strict settlements and the introduction of the 'trust of land' see the Trusts of Land and Appointment of Trustees Act 1996 s 2(1); and PARA 285 note 2 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(2) RIGHTS APART FROM STATUTE/(iii) Limited Owners/372. Right to profit from open mines.

372. Right to profit from open mines.

In conformity with the principles as to waste¹ a tenant for life is entitled to receive the profits from mines² worked under a demise made³ or contracted to be made⁴ by the settlor, or made in exercise of powers given by the settlor⁵ (or by the Settled Land Act 1925⁶, subject to the statutory limitations), or derived from workings of open mines by the trustees of the settlement⁷. If minerals⁸ have been worked in and under land held by a tenant for life or years, or at will, the tenant may use the empty space created by the working in any manner he chooses⁹.

Where mines are included in a residuary devise of realty, a tenant for life is entitled to the profits so long as the mines are properly retained unconverted by the trustees¹⁰. However, if an interest in mines of the nature of personal property, such as shares in a mining company¹¹, is included in a residuary bequest, it is a question of construction of the will¹² whether the property is to be enjoyed in specie¹³ or notionally converted and interest paid upon the value¹⁴.

As from 1 January 1997 no new settlements can be created under the Settled Land Act 1925¹⁵.

¹ See PARA 371 ante.

² For the meaning of 'mine' see PARA 5 ante.

³ *Spencer v Scurr* (1862) 31 Beav 334; *Miller v Miller* (1872) LR 13 Eq 263.

⁴ *Re Kemeys-Tynte, Kemeys-Tynte v Kemeys-Tynte* [1892] 2 Ch 211.

⁵ *Daly v Beckett* (1857) 24 Beav 114; *Re North, Garton v Cumberland* [1909] 1 Ch 625; *Chaytor v Trotter* (1902) 87 LT 33, CA.

⁶ See the Settled Land Act 1925 s 47; and SETTLEMENTS vol 42 (Reissue) PARA 843.

⁷ *Earl Cowley v Wellesley* (1866) LR 1 Eq 656.

⁸ For the meaning of 'minerals' see PARA 12 ante.

⁹ *Lewis v Branthwaite* (1831) 2 B & Ad 437; *Keyse v Powell* (1853) 2 E & B 132; *Milne v Taylor* (1850) 16 LTOS 172.

¹⁰ *Re Earl of Darnley, Clifton v Darnley* [1907] 1 Ch 159; *Miller v Miller* (1872) LR 13 Eq 263; and see *Wentworth v Wentworth* [1900] AC 163, PC; *Re Oliver, Wilson v Oliver* [1908] 2 Ch 74 at 78 per Warrington J.

¹¹ *Re Bates, Hodgson v Bates* [1906] WN 191.

¹² As to the construction of wills see generally WILLS.

¹³ *Re Bates, Hodgson v Bates* [1906] WN 191 (enjoyment in specie).

¹⁴ *Re Woods, Gabellini v Woods* [1904] 2 Ch 4; *Re Chaytor, Chaytor v Horn* [1905] 1 Ch 233. As to the rate of interest, and as to the adjustment of the rights as between tenant for life and remainderman see EXECUTORS AND ADMINISTRATORS. This adjustment does not seem to apply to property as to which a person dies wholly or partially intestate: see the Administration of Estates Act 1925 s 33(5); and EXECUTORS AND ADMINISTRATORS.

¹⁵ As to the phasing out of strict settlements and the introduction of the 'trust of land' see the Trusts of Land and Appointment of Trustees Act 1996 s 2(1); and PARA 285 note 2 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(2) RIGHTS APART FROM STATUTE/(iii) Limited Owners/373. Settlement containing special provisions.

373. Settlement containing special provisions.

The rights of a tenant for life may be varied by the instrument under which he holds from those normally incident to his interest. Thus he may be restrained from working open mines¹, or may, by being a tenant for life without impeachment of waste, be enabled to open new mines². The fact that a settlement contains an express grant of land and mines to the trustees does not enlarge the powers of the tenant for life with regard to mines³.

As from 1 January 1997 no new settlements can be created under the Settled Land Act 1925⁴.

1 *Ferrand v Wilson* (1845) 15 LJ Ch 41. For the meaning of 'mine' see PARA 5 ante. As to open mines see PARA 7 et seq ante.

2 *Campbell v Wardlaw* (1883) 8 App Cas 641, HL; *Re Ridge, Hellard v Moody* (1885) 31 ChD 504, CA. But a limited owner, although unimpeachable for waste, may not commit equitable waste: *Bishop of London v Web* (1718) 1 P Wms 527; *Rowe v Wood* (1822) 2 Jac & W 553. See further *Re Hodgkinson, Hodgkinson v Hodgkinson* (1924) 132 LT 526. As to equitable waste see EQUITY; SETTLEMENTS vol 42 (Reissue) PARA 997.

3 *Whitfield v Bewit* (1724) 2 P Wms 240.

4 As to the phasing out of strict settlements and the introduction of the 'trust of land' see the Trusts of Land and Appointment of Trustees Act 1996 s 2(1); and PARA 285 note 2 ante. As to the exclusion and restriction of powers see s 8; and TRUSTS vol 48 (2007 Reissue) PARA 1035.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(2) RIGHTS APART FROM STATUTE/(iii) Limited Owners/374. Powers of tenant for years.

374. Powers of tenant for years.

Similarly, the rights of a tenant for years may be varied by the lease under which he holds. If the lease expressly grants 'all mines' he may work new mines¹; if it grants land with the mines in it, and the land contains both open and unopened mines, the lessee may only work the opened mines; however, if there are no open mines, he may open new ones². An exception of 'all royalties' in a lease of land does not diminish the tenant's power to work open mines³. The rights of a tenant for years may be extended by custom⁴, or by the High Court after a preliminary application to the Secretary of State⁵ for the purpose⁶.

As from 1 January 1997 no new settlements can be created under the Settled Land Act 1925⁷.

1 For the meaning of 'mine' see PARA 5 ante.

2 *Saunders's Case* (1599) 5 Co Rep 12a; *Clegg v Rowland* (1866) LR 2 Eq 160; *Dashwood v Magniac* [1891] 3 Ch 306, CA. As to open mines see PARA 7 et seq ante.

3 *Brown v Chadwick* (1857) 7 ICLR 101; *Countess of Listowel v Gibbings* (1858) 9 ICLR 223.

4 *Tucker v Linger* (1883) 8 App Cas 508, HL. See generally CUSTOM AND USAGE.

5 As to the Secretary of State see PARA 4 ante.

6 See PARA 383 et seq post.

7 As to the phasing out of strict settlements and the introduction of the 'trust of land' see the Trusts of Land and Appointment of Trustees Act 1996 s 2(1); and PARA 285 note 2 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(2) RIGHTS APART FROM STATUTE/(iii) Limited Owners/375. Meliorating waste.

375. Meliorating waste.

A limited owner may be free from liability if his workings, although technically waste, have in fact improved the land¹. A tenant for life may not, however, deliberately commit waste on the plea that improvement is his object².

As from 1 January 1997 no new settlements can be created under the Settled Land Act 1925³.

1 See generally *Doherty v Allman* (1878) 3 App Cas 709, HL; LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 432; SETTLEMENTS.

2 *Coppinger v Gubbins* (1846) 3 Jo & Lat 397; *Harris v Ekins* (1872) 20 WR 999.

3 As to the phasing out of strict settlements and the introduction of the 'trust of land' see the Trusts of Land and Appointment of Trustees Act 1996 s 2(1); and PARA 285 note 2 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(2) RIGHTS APART FROM STATUTE/(iii) Limited Owners/376. Ownership of minerals improperly worked.

376. Ownership of minerals improperly worked.

If minerals¹ are improperly worked by a limited owner, the minerals so severed, or their value, belong to the first person beneficially entitled in fee simple in possession. If at the time of working there is a person in existence beneficially entitled in fee simple, the severed minerals immediately become his property², even if his equitable interest is defeasible³, and even if, between his interest and that of the person in possession, a life interest without impeachment of waste is interposed⁴. If at the time of working there is no such person in existence, the proceeds of the severed minerals are invested and the income accumulated during the life of the wrongdoer, and after his death the income of the aggregate fund will be paid to the persons, if any, successively entitled, whether with or without impeachment of waste, to limited interests in the estate until some person becomes beneficially entitled to the fee simple in possession⁵.

1 For the meaning of 'minerals' see PARA 12 ante.

2 *Whitfield v Bewit* (1724) 2 P Wms 240; *Bewick v Whitfield* (1734) 3 P Wms 267 at 268; *Bell v Wilson* (1866) 1 Ch App 303; *Re Barrington, Gamlen v Lyon* (1886) 33 ChD 523.

3 See *Re Cavendish, Cavendish v Mundy* [1877] WN 198.

4 *Pigot v Bullock* (1792) 1 Ves 479 at 484; *Re Barrington, Gamlen v Lyon* (1886) 33 ChD 523.

5 *Bagot v Bagot, Legge v Legge* (1863) 32 Beav 509; and see *Gresley v Mousley* (1862) 3 De G F & J 433.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(2) RIGHTS APART FROM STATUTE/(iii) Limited Owners/377. Remedies for improper working.

377. Remedies for improper working.

If minerals¹ are improperly worked, the owner of the severed minerals may bring a claim for conversion² or for an account³. A claim for account will lie even where the claimant is not entitled to an injunction⁴, and is also available against the estate of a deceased wrongdoer⁵. Further, if the claimant has not disintitiled himself by his own conduct⁶, the remedy by injunction is available⁷, even if the injury is only threatened⁸. The same remedies are available in the case of equitable waste⁹.

If there is collusion between a limited owner and a remainderman these remedies may be utilised by trustees to preserve contingent remainders and to protect the interests of persons not in esse entitled to intermediate interests¹⁰.

The lapse of six years normally operates to bar the remedy¹¹.

1 For the meaning of 'minerals' see PARA 12 ante.

2 *Clavering v Clavering* (1729) Mos 219; and see *Re Barrington, Gamlen v Lyon* (1886) 33 ChD 523. See also the Torts (Interference with Goods) Act 1977; para 35 ante; and TORT vol 45(2) (Reissue) PARA 548.

3 *Jesus College v Bloom* (1745) Amb 54; *Garth v Cotton* (1753) 3 Atk 751 at 753, 756 per Lord Hardwicke LC; *Parrott v Palmer* (1834) 3 My & K 632; *Bagot v Bagot, Legge v Legge* (1863) 32 Beav 509; *Wright v Pitt* (1870) LR 12 Eq 408. As to the power to award interest on debts and damages see the Supreme Court Act 1981 s 35A (as added); the County Courts Act 1984 s 69 (as amended); CIVIL PROCEDURE; COURTS vol 10 (Reissue) PARA 608; and DAMAGES vol 12(1) (Reissue) PARA 848. As to the claim for an account see PARA 35 ante; and EQUITY.

4 See *Jesus College v Bloom* (1745) Amb 54.

5 *Bagot v Bagot, Legge v Legge* (1863) 32 Beav 509. See the Law Reform (Miscellaneous Provisions) Act 1934 s 1 (as amended); and EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARAS 761 et seq, 814 et seq.

6 *Burrowes v Hayes* (1834) Hayes & Jo 597.

7 *Flamang's Case* (circa 1783), cited in *Hanson v Gardiner* (1802) 7 Ves 305 at 308; *Viner v Vaughan* (1840) 2 Beav 466 at 469 per Lord Langdale MR; *Ferrand v Wilson* (1845) 4 Hare 344 at 388. The court is unwilling to grant an interim injunction in the case of mines actually being worked: *Clavering v Clavering* (1726) 2 P Wms 388 at 389 per King LC. As to the remedy of injunction generally see CIVIL PROCEDURE vol 11 (2009) PARA 331 et seq. See also PARA 36 ante.

8 *Gibson v Smith* (1741) 2 Atk 182.

9 *Bishop of London v Web* (1718) 1 P Wms 527.

10 *Garth v Cotton* (1753) 3 Atk 751.

11 See PARA 48 ante.

UPDATE

377 Remedies for improper working

NOTE 3--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(2) RIGHTS APART FROM STATUTE/(iii) Limited Owners/378. Reversioners and remaindermen.

378. Reversioners and remaindermen.

A reversioner or remainderman is not entitled to work mines¹. If he does in fact work them, the tenant for life is probably entitled to have the proceeds invested and to be paid the income arising from them, but he may, by his conduct, disentitle himself to any benefit².

1 *Dickin v Hamer* (1860) 1 Drew & Sm 284. See also *Doherty v Allman* (1878) 3 App Cas 709 at 734, HL, per Lord Blackburn. As to interests in reversion generally see REAL PROPERTY. For the meaning of 'mine' see PARA 5 ante.

2 *Dickin v Hamer* (1860) 1 Drew & Sm 284 at 298 per Kindersley V-C.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(2) RIGHTS APART FROM STATUTE/(iv) Fiduciary Owners, Mortgagors and Mortgagees/379. Powers of trustees and personal representatives.

(iv) Fiduciary Owners, Mortgagors and Mortgagees

379. Powers of trustees and personal representatives.

If and as long as any person who is entitled to a beneficial interest in possession affecting land is a minor¹, or any person is contingently entitled to land, the trustees appointed for the purpose by the settlement² may enter into and continue in possession of the land on his behalf³. The trustees manage or superintend the management of the land, and have full power to continue the working of mines⁴, minerals⁵ and quarries⁶ which have usually been worked⁷. In dealing with the real and personal estate of the deceased his personal representatives, for the purposes of administration or during the minority of any beneficiary or the subsistence of any life interest or until the period of distribution arrives, have powers of management⁸. As from 1 January 1997 no new settlements can be created under the Settled Land Act 1925⁹.

Apart from these provisions trustees are not entitled, except in the execution of powers conferred upon them by the document constituting the trust, to work mines or quarries¹⁰.

1 As to the age of majority see the Family Law Reform Act 1969 s 1; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 1.

2 In the case of a strict settlement if no trustees are so appointed, the settlement trustees may act unless the settlement or court order by which they or their predecessors were appointed expressly provides to the contrary: Settled Land Act 1925 s 102(1). If there are no settlement trustees, the court may appoint trustees to act: s 102(1). As to the appointment and retirement of trustees in the case of a trust of land see the Trusts of Land and Appointment of Trustees Act 1996 ss 19, 20; and TRUSTS vol 48 (2007 Reissue) PARAS 845, 846, 897.

3 See the Settled Land Act 1925 s 102(1), (5) (as amended); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARAS 54-55. As to the general power of trustees in the case of a trust of land see the Trusts of Land and Appointment of Trustees Act 1996 s 6 (as amended); and TRUSTS vol 48 (2007 Reissue) PARA 1035.

4 For the meaning of 'mine' see PARA 5 ante.

5 For the meaning of 'minerals' see PARA 12 ante.

6 For the meaning of 'quarry' see PARA 6 ante.

7 See the Settled Land Act 1925 s 102(2)(c). Where a minor is impeachable for waste, the trustees must not commit waste: see s 102(2).

8 As to the powers of management see the Administration of Estates Act 1925 s 39 (as amended); and EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 438 et seq.

9 As to the phasing out of strict settlements and the introduction of the 'trust of land' see the Trusts of Land and Appointment of Trustees Act 1996 s 2(1); and PARA 285 note 2 ante.

10 As to the powers of trustees generally see TRUSTS vol 48 (2007 Reissue) PARA 971 et seq.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(2) RIGHTS APART FROM STATUTE/(iv) Fiduciary Owners, Mortgagors and Mortgagees/380. Mortgagors.

380. Mortgagors.

A mortgagor in possession may be restrained from committing waste if the security is insufficient¹, and if he opens a new mine or quarry the opening will enure for the benefit of the mortgagee².

¹ *Farrant v Lovel* (1750) 3 Atk 723; *King v Smith* (1843) 2 Hare 239; and see MORTGAGE vol 77 (2010) PARA 358.

² *Elias v Snowdon Slate Quarries Co* (1879) 4 App Cas 454, HL. If the mines are being worked at the time when the mortgagee takes possession, he is, it seems, bound to continue the workings in the ordinary course: *Rowe v Wood* (1822) 2 Jac & W 553 at 555, 556 per Lord Eldon LC; *Gloucester County Bank v Rudry Merthyr Steam and House Coal Colliery Co* [1895] 1 Ch 629, CA.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(2) RIGHTS APART FROM STATUTE/(iv) Fiduciary Owners, Mortgagors and Mortgagees/381. Mortgagees.

381. Mortgagees.

A mortgagee in possession may work open mines¹ but he is not bound to make any greater expenditure on them than would be made by a prudent owner². If the security is insufficient he may open and work new mines, but not otherwise³, and the burden of showing that the security is insufficient is on the mortgagee⁴. If a mortgagee who is not entitled to do so works mines he will be charged with the gross receipts and disallowed his expenses⁵, and he may be charged an occupation rent⁶; and persons working by his authority may be jointly liable with him⁷. If, on the other hand, the working is justified, the mortgagee is chargeable only with the net profits⁸. In any case a mortgagee who opens mines speculates at his own hazard, and cannot throw any part of a loss upon the mortgagor⁹.

Whether or not his security is insufficient, a mortgagee in possession will be restrained from working mines wastefully or improperly¹⁰, and, if mismanagement is proved, a receiver or manager may be appointed by the court¹¹, and the mortgagee may be made liable for damage caused by his improper working¹².

1 See PARA 380 text and note 2 ante. For the meaning of 'mine' see PARA 5 ante. As to open mines see PARA 7 et seq ante.

2 *Rowe v Wood* (1822) 2 Jac & W 553. As to his rights in respect of permanent improvements see *Tipton Green Colliery Co v Tipton Moat Colliery Co* (1877) 7 Ch D 192.

3 *Millett v Davey* (1862) 31 Beav 470. A mortgagee may, of course, be expressly authorised to work by the mortgage deed: see eg *Norton v Cooper* (1854) 5 De GM & G 728.

4 *Millett v Davey* (1862) 31 Beav 470. The fact that interest is in arrear is important in enabling the mortgagee to justify his working: *Millett v Davey* supra at 473 per Romilly MR.

5 *Thorneycroft v Crockett* (1848) 16 Sim 445; *Hood v Easton* (1854) 2 Giff 692.

6 *Thorneycroft v Crockett* (1848) 16 Sim 445.

7 *Hood v Easton* (1854) 2 Giff 692.

8 *Millett v Davey* (1862) 31 Beav 470.

9 *Hughes v Williams* (1806) 12 Ves 493; *Rowe v Wood* (1822) 2 Jac & W 553.

10 *Millett v Davey* (1862) 31 Beav 470; and see MORTGAGE vol 77 (2010) PARA 436 et seq.

11 *Rowe v Wood* (1822) 2 Jac & W 553; and see RECEIVERS vol 39(2) (Reissue) PARA 483.

12 *Taylor v Mostyn* (1886) 33 ChD 226, CA, where the mortgagee was also lessee, and was held liable to be charged in the mortgage action for breaches of covenant under the lease.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(2) RIGHTS APART FROM STATUTE/(v) Public Authorities/382. Powers of public authorities to take minerals.

(v) Public Authorities

382. Powers of public authorities to take minerals.

Highway authorities have the right to dig and gather materials for the purpose of repairing roads out of and from commons, and also in some cases from inclosed land which is not of a strictly private nature¹.

Railway and other authorities² have special powers in respect of getting materials for the construction of railways and other works³; and water and sewerage authorities and the Environment Agency⁴ have similar powers⁵.

1 See HIGHWAYS, STREETS AND BRIDGES.

2 See PARA 137 ante.

3 See PARAS 137, 144 ante.

4 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; WATER AND WATERWAYS vol 100 (2009) PARA 17.

5 As to mineral rights see the Water Industry Act 1991 s 188, Sch 14; the Water Resources Act 1991 s 182, Sch 23 (both as amended); and WATER AND WATERWAYS vol 101 (2009) PARA 492 et seq.

UPDATE

382-383 Powers of public authorities to take minerals, The legislation

Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

382 Powers of public authorities to take minerals

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(3) STATUTORY RIGHTS OF WORKING/(i) Mines (Working Facilities and Support) Act 1966/A. RIGHTS, RESTRICTIONS AND SAVINGS/383. The legislation.

(3) STATUTORY RIGHTS OF WORKING

(i) Mines (Working Facilities and Support) Act 1966

A. RIGHTS, RESTRICTIONS AND SAVINGS

383. The legislation.

In addition to the rights which exist at common law¹, rights of working minerals², including rights to ancillary facilities, are provided for by statute. Thus extensive rights of searching for and working minerals may be granted under the Mines (Working Facilities and Support) Act 1966³. There is also power to work minerals under the Atomic Energy Act 1946⁴, and power to search, bore for and get petroleum under the Petroleum Act 1998⁵. Special provision was made in relation to coal by the Opencast Coal Act 1958, but powers under that Act ceased to be exercisable after 31 December 1999⁶ and coal now falls within the general regime for minerals contained in the Mines (Working Facilities and Support) Act 1966.

The right to work minerals is subject to the provisions of the town and country planning legislation⁷ and other relevant statutory controls⁸.

1 See PARAS 363-382 ante.

2 For the meaning of 'minerals' see PARA 12 ante.

3 See PARA 384 et seq post. The Mines (Working Facilities and Support) Act 1966, which came into force on 10 April 1966 (see s 16(3)), is a consolidating statute. Its provisions were contained previously in the Mines (Working Facilities and Support) Act 1923 Pt I (ss 1-14) (repealed), and various amending enactments, all of which are repealed, subject to savings for transitional purposes: see the Mines (Working Facilities and Support) Act 1966 s 15(1), Sch 1 (repealed).

The scope of the Mines (Working Facilities and Support) Act 1966 was extended by the Mines (Working Facilities and Support) Act 1974 and it has been made subject to various other amendments, including amendments consequential on the restructuring of the coal industry under privatisation by the Coal Industry Act 1994: see PARA 50 et seq ante.

4 See FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1425 et seq.

5 See the Petroleum 1998 as applied by the Continental Shelf Act 1964. As to petroleum production see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1425 et seq.

6 See the Coal Industry Act 1994 s 52(1); and PARA 404 post. The Opencast Coal Act 1958 has not been repealed, and makes provision (inter alia) for compensation: see PARA 404 et seq post.

7 See PARAS 355-357 ante; and TOWN AND COUNTRY PLANNING. For examples of other statutory provisions relevant to the right to work minerals see PARA 358 ante (facilities for Natural Environment Research Council); para 359 ante (taxation); para 360 ante (control of prices of minerals); para 361 ante (regional development grants); and PARA 362 ante (mining consultants etc).

8 Eg the Health and Safety at Work etc Act 1974; the Mines and Quarries Act 1954; and the Environmental Protection Act 1990. See also the Deep Sea Mining (Temporary Provisions) Act 1981; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 172 et seq.

UPDATE

382-383 Powers of public authorities to take minerals, The legislation

Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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384. Grant of rights.

Application may be made to the Secretary of State¹ for the grant of certain rights to search for² or work³ minerals⁴, or for certain ancillary rights⁵. On such application being referred to the High Court⁶, subject to certain statutory provisions⁷, the court may confer the rights⁸ if it is satisfied that the grant is expedient in the national interest⁹.

1 As to the Secretary of State see PARA 4 ante.

2 See PARA 358 ante.

3 In the Mines (Working Facilities and Support) Act 1966 references to working minerals include references to working, carrying away, treating and converting minerals: s 14(1). As to the meaning of 'minerals' see s 14(1); and PARA 12 note 23 ante.

4 See PARAS 385-386 post.

5 See PARA 387 post.

6 See PARAS 393, 395 post.

7 Ie those of the Mines (Working Facilities and Support) Act 1966: see PARA 393 et seq post.

8 See *ibid* s 1 (as amended).

9 See *ibid* s 3(1). It has been suggested that 'national interest' may be considered as something which is to be distinguished from the private interest of individuals, and that the expression is akin to the economic doctrine of 'the greatest good of the greatest number': *Consett Iron Co Ltd v Clavering Trustees* (1934) unreported per MacKinnon J (on appeal [1935] 2 KB 42, CA). It is submitted that the expression is synonymous with 'public benefit'. In *A-G v Terry* (1874) 9 Ch App 423 at 427n, 428n, Jessel MR considered that public benefit must involve direct benefit. See also *Re Consett Iron Co Ltd's Application* [1938] 1 All ER 439, sub nom *Consett Iron Co Ltd v Clavering Estates (Durham) Ltd* (1938) 54 TLR 348. It has been suggested that the task delegated to the court is very similar to that which is discharged by the Committee of Parliament considering the expediency of allowing a motion to come up for private legislation: see *Consett Iron Co Ltd v Clavering Trustees* supra, cited in *Re Consett Iron Co Ltd's Application* supra at 445 and 352.

It has been suggested that the potential employment of a number of workers was relevant in considering the national interest: see *Re Consett Iron Co Ltd's Application* supra at 447 and 352 per Finlay J, and at 450 and 354 per Sir Francis Taylor KC. See also *BP Petroleum Developments Ltd v Ryder* [1987] 2 EGLR 233 at 238-239, [1987] RVR 211 at 214 per Gibson J.

The question whether a particular thing is in the national interest is a question of the times, and is a question of fact: *Re Amalgamated Anthracite Collieries Ltd's Application* (1927) 43 TLR 672. It would not be in the national interest to risk considerable damage to surface works for the sake of getting a negligible quantity of minerals, and even where the parties can agree on terms of a settlement the public interest must be considered and safeguarded and a fortiori the court cannot be bound by an offer put forward by one of them: *Re Nunnery Colliery Co's Application* (1924) 69 Sol Jo 52; *Re Naylor Benzon Mining Co Ltd* [1950] Ch 567 at 576, [1950] 1 All ER 518 at 524 per Wynn-Parry J. The same applies where rival applicants have agreed to divide an area between them: *Re J and J Charlesworth Ltd and Henry Briggs, Son & Co Ltd* (1926) 43 TLR 100.

The fact that the danger may exist of minerals being left permanently unworked is relevant only in so far as it relates to the national interest which is itself a question for the court to decide according to the facts of the case: *Re Henry Lawson Ltd's Application* (1930) 144 LT 128. See also *Archibald Russell Ltd v Nether Pollok Ltd* 1938 SC 1; and PARA 395 note 15 post.

As to the national interest generally see *Re Manners Colliery Co Ltd* (1926) 42 TLR 773; *Re Denaby and Cadeby Main Collieries Ltd* (1927) 43 TLR 322; *Re Tilmanstone (Kent) Collieries Ltd* [1928] 1 KB 599, CA; *Re Hamsterley Ganister Co Ltd's Application* (1931) 75 Sol Jo 602; *Re West of England Road Metal Co Ltd* [1936] 2 All ER 1607; *Re Walsall Wood Colliery Co Ltd's Application* [1939] 2 KB 817, [1939] 3 All ER 864; *Re Wolstanton Ltd's*

Application [1952] Ch 519 (sub nom *Re National Coal Board's Application* [1952] 1 All ER 678n); *Re National Coal Board's Application* [1958] 2 All ER 351n, [1958] 1 WLR 599; *Re W J King & Sons Ltd's Application* [1976] 1 All ER 770, [1976] 1 WLR 521, CA.

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385. General rights in respect of minerals.

A right to search for¹ or work any minerals² other than peat cut for purposes other than sale may be conferred on any person, exercisable either by himself or through a lessee³.

Where the working, or the working in the most efficient and economical manner, of any such minerals is impeded⁴ by any restrictions, terms or conditions⁵ contained in a mining lease⁶, or otherwise binding on the person entitled to work the minerals, a right may be conferred to work the minerals freed wholly or partially from the restrictions or conditions, or to work the minerals on other terms and conditions⁷.

No application with respect to the grant of a right under these provisions⁸ made in respect of coal⁹ may be referred by the Secretary of State¹⁰ to the court¹¹ unless the Coal Authority¹² has given notice in writing to the Secretary of State that it has no power to grant the right, or any of the rights, for which the application is made¹³.

Where there is a danger¹⁴ of any minerals other than coal being left permanently¹⁵ unworked (1) by reason of the necessity for the concurrence¹⁶ of two or more persons¹⁷; or (2) by reason of the minerals being owned in such small parcels that they cannot be properly or conveniently¹⁸ worked by themselves¹⁹, a right to work the minerals may be conferred on a person having an interest²⁰ in them or, in the case of minerals owned in small parcels, in minerals adjacent²¹ to them, exercisable either by himself or through a lessee²².

1 See PARA 358 ante.

2 As to references to working minerals see PARA 384 note 3 ante. As to the meaning of 'minerals' see PARA 12 note 23 ante.

3 Mines (Working Facilities and Support) Act 1966 s 1, Table para 1(1), (2) (Table para 1 substituted by the Mines (Working Facilities and Support) Act 1974 s 1; and amended by the Coal Industry Act 1994 s 67(1), (8), Sch 9 para 10(1)(a), Sch 11 Pt II). As to the meaning of 'lessee' see note 6 infra. This provision, and the provision referred to in the text to note 22 infra, apply to the granting of a right required by reason of the subsistence either of a retained interest (as defined by the Coal Act 1938 s 5 (repealed)) or of any interest arising under a freeholder's lease (as defined by the Coal Act 1943 s 4 (repealed)) (Mines (Working Facilities and Support) Act 1966 s 13(a)), but they do not apply to minerals within the Coal Act 1938 s 3(4)(b) (repealed) (which refers to minerals other than coal comprised in a coal-mining lease subsisting at the valuation date under that Act (Mines (Working Facilities and Support) Act 1966 s 13(b)). Where the Coal Industry Act 1994 repeals any provisions of the Coal Act 1938, that repeal does not affect so much of the Coal Industry Act 1994 or any other enactment as makes provision by reference to anything within the meaning of the Coal Act 1938: see the Coal Industry Act 1994 s 67(7), Sch 10 para 1.

4 'Impeded' here relates exclusively to something which impedes or obstructs the actual working or carrying away of the minerals, ie the manner of working or carrying away, and does not apply to financial obligations (eg royalties and wayleave rents) imposed by a lease upon the lessee: see *Consett Iron Co Ltd v Clavering Trustees* [1935] 2 KB 42, CA.

5 Restrictions, terms or conditions contained in a mining lease do not here include financial terms, and accordingly there is no jurisdiction to relieve a lessee from his obligations to pay royalties, wayleave rents or any rent imposed by his lease: *Consett Iron Co Ltd v Clavering Trustees* [1935] 2 KB 42, CA. A statutory restriction on working imposed by an Inclosure Act award is within the provision: *Re Walsall Wood Colliery Co Ltd's Application* [1939] 2 KB 817, [1939] 3 All ER 864.

6 'Lease' includes underlease or other tenancy and a licence, and 'lessor' and 'lessee' have corresponding meanings: Mines (Working Facilities and Support) Act 1966 s 14(1).

7 See *ibid* s 1, Table para 1(3) (as substituted: see note 3 *supra*).

8 *Ie* under *ibid* s 1, Table para 1 (as substituted and amended: see note 3 *supra*).

9 In the Mines (Working Facilities and Support) Act 1966, unless the context otherwise requires 'coal' means bituminous coal, cannel coal and anthracite: see s 14(1). In s 4(5) (as amended), 'coal' does not include lignite or brown coal but (subject to that) does include, together with coal as defined in s 14(1), all other minerals worked or to be worked therewith: see s 4(6) (added by the Coal Industry Act 1994 Sch 9 para 10(3)(b)).

10 As to the Secretary of State see PARA 4 *ante*.

11 For the purposes of the Mines (Working Facilities and Support) Act 1966, unless the context otherwise requires, 'court' in the application of the Act to England and Wales, means the High Court: see s 14(1).

12 As to the Coal Authority see PARA 52 *et seq* *ante*.

13 See the Mines (Working Facilities and Support) Act 1966 s 4(5) (amended by the Coal Industry Act 1987 s 1(1), (2), Sch 1 para 12; and the Coal Industry Act 1994 s 67(1), Sch 9 para 10(3)(a)).

14 'Danger' has been held to include various factors according to the circumstances of the particular case: see *Re New Hucknall Colliery Co Ltd* (1925) 41 TLR 383 (minerals set out as pillar for support of church; applicants wishing to remove pillar by continuous system of longwall working); *Re Nunnery Colliery Co's Application* (1924) 69 Sol Jo 52. It is suggested that other cases include difficulty in establishing ownership of minerals in numerous small plots (see *Re Walsall Wood Colliery Co Ltd's Application* [1939] 2 KB 817, [1939] 3 All ER 864); trouble and expense of separate negotiations with such numerous owners with the possibility of failure to secure reasonable terms (see eg *Archibald Russell Ltd v Nether Pollok Ltd* 1938 SC 1); surrounding minerals in possession of applicants who are the only persons who can practicably or economically and efficiently work the minerals in question (cf *Re J and J Charlesworth Ltd and Henry Briggs, Son & Co Ltd* (1926) 43 TLR 100).

15 It is submitted that 'permanently' is used here in a merely relative sense, to exclude a temporary suspension of comparatively short duration. See further *Re West of England Road Metal Co Ltd* [1936] 2 All ER 1607.

16 For the purposes of the Mines (Working Facilities and Support) Act 1966 a person whose concurrence is necessary for the exercise of a right is deemed to be a person having power to grant the right, or a person from whom the right must be obtained as the case may be: s 14(2).

17 *Ie* by reason of the minerals being comprised in or lying under former copyhold land (see PARA 312 *ante*; and *Re Markham Main Colliery Ltd* (1925) 41 TLR 672), or land subject to a lease (see *Re East Yorkshire Gravel Co Ltd's Application* [1954] 3 All ER 631, [1955] 1 WLR 88), exception, reservation, restriction, covenant or condition, or otherwise (eg by reason of an inclosure award: see *Calstock RDC v Cornwall County Council* (1924) 1 Bamber's Mining Cases 79; *Re Walsall Wood Colliery Co Ltd's Application* [1939] 2 KB 817, [1939] 3 All ER 864) not capable of being worked without the concurrence of two or more persons: see the Mines (Working Facilities and Support) Act 1966 s 1, Table para 2(2)(a). 'Copyhold land' has the same meaning as in the Law of Property Act 1922 (see s 189 (repealed)): Mines (Working Facilities and Support) Act 1966 s 14(1). As to the statutory right to work coal in former copyhold land see PARA 400 *et seq* *post*.

18 'Properly and conveniently' does not exclude considerations of cost: *Re Tilmanstone (Kent) Collieries Ltd* [1928] 1 KB 599, CA.

19 See the Mines (Working Facilities and Support) Act 1966 s 1, Table para 2(2)(b). Two classes of case may be suggested: (1) an isolated parcel belonging to one owner, which is too small to be worked independently; and (2) a considerable area made up of numerous small parcels, each in different ownership.

20 *Ie* a proprietary interest: *Re East Yorkshire Gravel Co Ltd's Application* [1954] 3 All ER 631, [1955] 1 WLR 88; cf *Re West of England Road Metal Co Ltd* [1936] 2 All ER 1607. A proprietary interest may be of at least three kinds, that of an owner, a lessee or a licensee with a licence not presently revocable: *Re East Yorkshire Gravel Co Ltd's Application* *supra* at 636 and 94 respectively per Harman J.

21 'Adjacent' has in ordinary usage no precise and uniform meaning, but it is not confined to places adjoining and includes those close to or near: see *Wellington Corpn v Lower Hutt Corpn* [1904] AC 773, PC; cf *Re Ecclesiastical Comrs for England's Conveyance* [1936] Ch 430 at 441 per Luxmoore J. See also *Birmingham Corpn v Allen* (1877) 6 ChD 284, CA; *English Clays Lovering Pochin & Co Ltd v Plymouth Corpn* [1974] 2 All ER 239, [1974] 1 WLR 742, CA.

22 See the Mines (Working Facilities and Support) Act 1966 s 1, Table para 2(1), (2); and note 3 *supra*. Subject to s 4(5) (as amended), where the working of any coal, or the working of any coal in the most efficient and economical manner, is impeded by any restrictions, terms or conditions contained in a mining lease, or otherwise binding on the person entitled to work the coal, a right may be conferred to work the coal freed wholly or partially from such restrictions or conditions, or to work the coal on other terms and conditions: see s 1, Table para 3(2) (repealed). Section 1, Table para 3 (repealed) was repealed by the Coal Industry Act 1994 Sch 9 para 10(1)(b), (2), Sch 11 Pt II, as from 31 October 1994; but where an application to work coal freed from restrictions contained in a mining lease had been made before that date, that application may be continued and disposed of on or after that date as if it were an application under s 1, Table para 1 (as substituted and amended): Sch 9 para 10(2).

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386. Rights in respect of the adjustment of boundaries.

Where the persons working two adjoining mines¹ have agreed on an adjustment of boundaries between the mines² with a view to reducing the amount of minerals³ to be left unworked between the mines, or to enabling the minerals to be worked⁴ more efficiently or economically, and effect cannot be given to the agreement by reason of the failure or refusal of the lessors⁵ of the mines or the owners of the surface⁶, or any of them, to concur, a right may be conferred on the persons working the mines respectively to work the minerals in accordance with the adjusted boundaries⁷. However, no order may be made under this provision on the ground of any failure or refusal on the part of the Coal Authority⁸.

1 For the meaning of 'mine' see PARA 5 ante.

2 Eg the substitution of a straight boundary for a sinuous boundary.

3 As to the meaning of 'minerals' see PARA 12 note 23 ante.

4 As to references to working minerals see PARA 384 note 3 ante.

5 For the meaning of 'lessor' see PARA 385 note 6 ante.

6 'Surface' in relation to land includes any buildings, works or things erected, constructed or growing on it: see the Mines (Working Facilities and Support) Act 1966 s 14(1).

7 See *ibid* s 1, Table para 4(1).

8 See *ibid* s 1, Table para 4(2) (amended by the Coal Industry Act 1987 s 1(1), (2), Sch 1 para 12; and the Coal Industry Act 1994 s 67(1), Sch 9 para 10(1)(c)). As to the Coal Authority see PARA 52 et seq ante.

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387. Ancillary rights.

An ancillary right¹ may be conferred² on a person having the right to work minerals³ who is working or desirous of working the minerals either by himself or through his lessees⁴, if the right is required in order that the minerals may be properly and conveniently⁵ worked by him, and the proper and efficient working of the minerals is unduly hampered⁶ by his inability⁷ or failure to obtain that right⁸.

In relation to minerals, 'ancillary right' means any facility, right or privilege and, without prejudice to the generality of that provision, includes: (1) a right to let down the surface⁹; (2) a right of airway, shaftway, or surface or underground wayleave¹⁰, or other right for the purpose of access to or conveyance of minerals¹¹, or the ventilation or drainage of the mines¹²; (3) a right to use and occupy the surface for the erection of washeries, coke ovens, railways, by-product works or brick-making or other works, or of dwellings for persons employed in connection with the working of the minerals or with any such works¹³; (4) a right to obtain a supply of water or other substances in connection with the working of minerals¹⁴; and (5) a right to dispose of water or other liquid matter obtained from mines or any by-product works¹⁵. So far as required in order that coal¹⁶ may be properly and conveniently worked, and where the surface has been used for the erection of any works for a coal-mining purpose¹⁷, or of dwellings for persons employed in connection with the working of coal or in connection with any such works for a coal-mining purpose or with any works mentioned in head (3) above, 'ancillary right' also includes a right to use and occupy the works and dwellings for the purposes for which they were erected¹⁸.

An ancillary right may be conferred on a person on whom a right to work minerals is conferred at the same time or at any subsequent time¹⁹.

1 For the meaning of 'ancillary right' see the text to notes 9-18 infra.

2 The right may be conferred even where the same right was surrendered by the applicant if the terms of the original grant were unreasonable: *Re Consett Iron Co Ltd's Application* [1938] 1 All ER 439.

3 References in the Mines (Working Facilities and Support) Act 1966 to a right to work minerals include references to any right granted under s 1, Table para 1 (as substituted and amended) or Table para 3(2) (repealed) (see PARA 385 ante): see s 14(3). As to references to working minerals see PARA 384 note 3 ante. As to the meaning of 'minerals' see PARA 12 note 23 ante.

4 For the meaning of 'lessee' see PARA 385 note 6 ante.

5 As to the meaning of 'properly and conveniently' see PARA 385 note 18 ante.

6 Cf para 385 note 4 ante. See also *Re Consett Iron Co Ltd's Application* [1938] 1 All ER 439, sub nom *Consett Iron Co Ltd v Clavering Estates (Durham) Ltd* (1938) 54 TLR 348. It is not necessary for the applicant to show that he is hampered at the time of the application; potential hampering is sufficient: *Re Wolstanton Ltd's Application* [1952] Ch 519, sub nom *Re National Coal Board's Application* [1952] 1 All ER 678n.

7 See eg the reasons set out in PARA 394 post.

8 See the Mines (Working Facilities and Support) Act 1966 s 1, Table para 5(1).

9 See *ibid* ss 2(1)(a), 14(1). As to the meaning of 'surface' see PARA 386 note 6 ante. 'Right to let down the surface' includes a right to let down superincumbent or adjacent strata up to and including the surface: s 14(1). As to the statutory right to withdraw support under the Coal Industry Act 1994 see PARA 178 et seq ante. As to the right to let down the surface which may be conferred see *Re Markham Main Colliery Ltd* (1925) 41 TLR 672;

Re Manners Colliery Co Ltd (1926) 42 TLR 773. In practically all applications for the right to work, the right to let down the surface is also included. The right is granted subject to payment of compensation for damage resulting from it to persons entitled to it. The High Court has no power, on such an application, to vest land in the applicant, even though a right to work or quarry may in effect amount to a grant of the land itself (*Re West of England Road Metal Co Ltd* [1936] 2 All ER 1607), nor has it power to sanction the extinguishment or diversion of a highway (*Hoddesdon UDC v Broxbourne Sand and Ballast Pits Ltd* [1936] 2 KB 19, [1936] 1 All ER 798) or to grant a declaration that a highway is repairable by the inhabitants at large (*Re Somerville & Co Ltd's Application* [1937] 1 All ER 507).

10 See *Re Markham Main Colliery Ltd* (1925) 41 TLR 672; *Re Consett Iron Co Ltd's Application* [1938] 1 All ER 439. The former Railway and Canal Commission (see PARA 393 note 7 post) normally granted underground wayleaves free of wayleave rent. As to surface wayleaves see *Re Tilmanstone (Kent) Collieries Ltd* [1928] 1 KB 599, CA, where aerial ropeways extended for several miles between a colliery and Dover harbour.

11 As to the construction of the provision stated in the text see generally *Re Tilmanstone (Kent) Collieries Ltd* [1928] 1 KB 599, CA.

12 See the Mines (Working Facilities and Support) Act 1966 s 2(1)(b) (amended by the Town and Country Planning (Minerals) Act 1981 s 33(1); and the Petroleum Act 1987 s 27(a)); Mines (Working Facilities and Support) Act 1966 s 14(1).

13 See *ibid* ss 2(1)(c), 14(1).

14 See *ibid* ss 2(1)(d), 14(1).

15 See *ibid* ss 2(1)(e), 14(1).

16 For the meaning of 'coal' see PARA 385 note 9 ante.

17 For the meaning of 'coal-mining purpose' see the Coal Act 1938 s 44(1) (repealed with savings); and PARA 1 note 8 ante (definition applied by the Mines (Working Facilities and Support) Act 1966 s 14(1)).

18 See *ibid* s 2(3). Where such a right is to be granted on the termination of a lease, and a right to erect or use the works or dwellings was comprised in that lease, the High Court, in determining whether any compensation or consideration is to be paid or given in respect of the right to be granted by it and the amount of any compensation, must have regard to the fact that the right comprised in the lease was comprised in it and to the amount of any rent reserved by the lease in respect of it: see s 2(4). As to the meaning of 'lease' see PARA 385 note 6 ante.

19 See *ibid* s 1, Table para 5(2).

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388. Effect of grant of right.

A right granted under these provisions¹ does not confer on the grantee any greater or other power than if the right had been granted by a person legally entitled to grant the right, or relieve the grantee from any obligation or liability to which he would have been subject had the right been granted by such a person².

1 Ie under the Mines (Working Facilities and Support) Act 1966: see PARA 384 et seq ante.

2 Ibid s 10.

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389. Grant of rights to persons in fiduciary position.

An order under these provisions¹ may confer rights on a tenant for life or on any person having the statutory powers of a tenant for life², or any trustee, personal representative or other person in a fiduciary position; and any such rights so conferred are deemed to form part of the property subject to the settlement or the estate of the deceased person or the property subject to the trust, as the case may be³.

As from 1 January 1997 no new settlements can be created under the Settled Land Act 1925⁴.

1 le under the Mines (Working Facilities and Support) Act 1966: see PARA 384 et seq ante.

2 As to the persons having the statutory powers of a tenant for life see the Settled Land Act 1925 ss 20-26 (as amended); and SETTLEMENTS vol 42 (Reissue) PARA 761 et seq.

3 See the Mines (Working Facilities and Support) Act 1966 s 11.

4 As to the phasing out of strict settlements and the introduction of the 'trust of land' see the Trusts of Land and Appointment of Trustees Act 1996 s 2(1); and PARA 285 note 2 ante.

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390. Restrictions on working minerals required for support.

If any person having an interest in any land is not entitled to support or sufficient support, whether vertical or lateral, for any buildings or works, whether on or below the surface¹, erected or constructed, or intended to be erected or constructed, on or below the surface, and alleges that it is not reasonably practicable to obtain a right to such support by private arrangement for any of the reasons subsequently stated², he may send to the Secretary of State³ an application that such restrictions may be imposed on the working of the minerals⁴ under that land and the adjacent land as he may consider necessary to secure sufficient support to the buildings or works⁵. The Secretary of State must consider the application, and unless, after communication with such other parties interested, if any, as he thinks fit, he is of opinion that a prima facie case is not made out, he must refer it to the High Court⁶, which, if satisfied as to the statutory requirements and that it is expedient in the national interest⁷, may impose the necessary restrictions⁸ and, in default of agreement, determine the compensation payable⁹. There are special provisions which relate to coal¹⁰.

1 As to the meaning of 'surface' see PARA 386 note 6 ante.

2 See the Mines (Working Facilities and Support) Act 1966 s 3(2); and PARA 394 post.

3 As to the Secretary of State see PARA 4 ante.

4 As to references to working minerals see PARA 384 note 3 ante. As to the meaning of 'minerals' see PARA 12 note 23 ante.

5 See the Mines (Working Facilities and Support) Act 1966 s 7(1). The application must set out the circumstances alleged to justify the imposition of the restrictions, and must be in such form, and be accompanied by such information verified in such manner, as the Secretary of State may direct: see s 7(2); and cf para 393 post. The right to apply for restrictions does not apply to railway or canal companies, local authorities or other statutory bodies: see PARA 392 post.

For the purposes of s 7 (as amended), where any building or work is an ancient monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979 (see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 804), and is, in pursuance of that Act, under the guardianship or protection of the Secretary of State, or is under the guardianship of a local authority, the Secretary of State or the local authority, as the case may be, are deemed to be persons entitled to make an application under the Mines (Working Facilities and Support) Act 1966 s 7 (as amended): see s 7(8) (amended by the Ancient Monuments and Archaeological Areas Act 1979 s 64(2), (3), Sch 4 para 9, Sch 5; and by virtue of the Transfer of Functions (Scottish Royal Parks and Ancient Monuments) Order 1969, SI 1969/383, art 3; the Transfer of Functions (Wales) Order 1969, SI 1969/388, art 4; and the Secretary of State for the Environment Order 1970, SI 1970/1681, arts 2(1), 6(3)). As to ancient monuments see generally NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1002 et seq. See also the Mines (Working Facilities and Support) Act 1966 s 7A (as added); and PARA 391 post.

6 See *ibid* ss 7(3), 14(1). However, see also s 4(3); and PARA 393 post. Where it is alleged that the right in question cannot be obtained by reason of any person not having the necessary powers of disposition, or having unreasonably refused to grant it or having demanded terms which are unreasonable the Secretary of State must first communicate with that person: see s 7(3) proviso.

7 As to the national interest see PARA 384 note 9 ante.

8 Where any such case is referred to the court the court if satisfied that the requirements of the Mines (Working Facilities and Support) Act 1966 s 7 (as amended) are complied with in the case of the applicant, and that it is expedient in the national interest that restrictions should be imposed, may, by order, impose such restrictions, on such terms and subject to such conditions and for such period, as the court may think just, and

upon such order being made the right to enforce the restrictions imposed by the order, subject to the provisions of s 7(5)-(8) (s 7(8) as amended), vests in the applicant: see s 7(4). However, see also s 5(1); and PARA 395 post. The restrictions may be either on the quantity or position of the minerals to be worked, or on the methods of working or packing or otherwise such as may be necessary to secure adequate support to the buildings or works or to prevent or minimise damage to them: s 7(6). Regard must be had to the comparative values of the minerals and of the buildings or works or the cost of repairing damage likely to be caused to them by subsidence or to the comparative importance in the national interest of the erection or preservation of the buildings or works and of the working of the minerals: see s 7(7); and *Re Manners Colliery Co Ltd* (1926) 42 TLR 773.

The Coal Industry Act 1994 s 38 (right to withdraw support) (see PARA 178 ante) does not affect any restrictions, terms or conditions applicable to the working of coal by virtue of any order made (whether before or after the restructuring date) under the Mines (Working Facilities and Support) Act 1966 s 1 (as amended) or s 7 (as amended) (acquisition of rights to work minerals): see the Coal Industry Act 1994 s 40(2)(a); and PARAS 178 et seq ante, 391 post. As to the restructuring date (ie 31 October 1994) see PARA 3 note 9 ante.

9 See the Mines (Working Facilities and Support) Act 1966 s 7(5). However, see also s 5(2) (and PARA 395 post); s 8 (and PARA 397 et seq post).

10 See *ibid* s 7A (as added); and PARA 391 post.

UPDATE

390 Restrictions on working minerals required for support

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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391. Restrictions on working minerals required for support: special provisions relating to coal.

Subject to certain provisions¹, on an application under the Mines (Working Facilities and Support) Act 1966², the applicant is not required to pay or give any compensation or consideration³ in respect of the imposition of restrictions appearing to the court⁴ to be justified by the existence of any right to withdraw support to which any person⁵ is entitled under the Coal Industry Act 1994⁶.

This provision⁷ applies in any case where the Coal Industry Act 1994⁸ applies to the land in question otherwise than by virtue of the Coal Industry Act 1975⁹ only if the application under the Mines (Working Facilities and Support) Act 1966¹⁰ is sent to the Secretary of State before the end of the period of six months beginning with the date on which particulars of the notice relating to the land to which the application relates are first registered by the Coal Authority¹¹.

1 Ie subject to the Mines (Working Facilities and Support) Act 1966 s 7A(2), (3) (s 7A as added: see note 6 infra): see the text to notes 7-11 infra.

2 Ie on an application under *ibid* s 7 (as amended): see PARA 390 ante.

3 As to the requirement to pay or give compensation or consideration see *ibid* s 8; and PARAS 395, 397 post.

4 For the meaning of 'court' see PARA 385 note 11 ante. See also PARAS 393, 395 post.

5 Subject to the provisions of the Coal Industry Act 1994 Pt III (ss 37-56) (as amended), on and after the restructuring date, any licensed operator is to be entitled, so far as may be reasonably requisite for the carrying on of any coal-mining operations to which s 25 applies, to withdraw support from any land to which s 38 applies: see s 38(1); and PARA 178 ante. As to the restructuring date (ie 31 October 1994) see PARA 3 note 9 ante. For the meaning of 'licensed operator' see PARA 60 note 12 ante; and as to the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

6 Ie under *ibid* s 38: see the Mines (Working Facilities and Support) Act 1966 s 7A(1) (s 7A added by the Coal Industry Act 1994 s 67(1), Sch 9 para 10(4)). The Mines (Working Facilities and Support) Act 1966 s 7A(1) (as added) does not apply in a case where, in accordance with the Coal Industry Act 1994 s 38(2)(b), that provision applies to the land in question by virtue of the Coal Industry Act 1975 s 2(5)(a) (repealed): see the Mines (Working Facilities and Support) Act 1966 s 7A(2) (as so added).

7 Ie *ibid* s 7A(1) (as added).

8 Ie the Coal Industry Act 1994 s 38: see PARA 178 ante.

9 Ie the Coal Industry Act 1975 s 2(5) (repealed).

10 Ie under the Mines (Working Facilities and Support) Act 1966 s 7 (as amended): see PARA 390 ante.

11 Ie under the Coal Industry Act 1994 s 56: see the Mines (Working Facilities and Support) Act 1966 s 7A(3) (as added: see note 6 supra). As to the Coal Authority see PARA 52 et seq ante. As to the registration of rights under the Coal Industry Act 1994 s 56 see PARAS 108, 178 ante, 400 post.

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392. Saving for railways, canals, local authorities and statutory bodies.

Nothing in the Mines (Working Facilities and Support) Act 1966 prejudicially affects: (1) the right under the Railways Clauses Consolidation Act 1845¹, or any Act modifying that Act², or any other Act, whether public general, or local and private, of any railway or canal company, local authority or other statutory body to acquire minerals³ for the purposes of support⁴; or (2) any rights or interests in minerals which may have been acquired⁵ by any such company, authority or body⁶; or (3) any right of support from minerals⁷ to which any such company, authority or body may be entitled⁸; or (4) any right empowering any such company, authority or body to acquire the rights to which it is entitled directly or indirectly under any special Act or order relating to the company, authority or body or any statute incorporated with it⁹. Nor does it confer on any such company, authority or body the right to acquire under the Mines (Working Facilities and Support) Act 1966 any rights to prohibit or restrict the working¹⁰ of minerals¹¹.

1 Having regard to the words following the reference to the Act, this includes mining code provisions: see PARA 137 et seq ante.

2 Eg the Mines (Working Facilities and Support) Act 1923 s 15 (as amended); s 16: see PARA 137 et seq ante.

3 As to the meaning of 'minerals' see PARA 12 note 23 ante.

4 See the Mines (Working Facilities and Support) Act 1966 s 12(1)(a). See also PARA 137 et seq ante.

5 Eg by implication at common law (see PARA 139 ante), or by purchase of minerals (see PARAS 147-149 ante), or by payment of compensation under the mining code (see PARA 137 et seq ante).

6 Mines (Working Facilities and Support) Act 1966 s 12(1)(b).

7 Eg the right of a highway authority to support for the highway: *Hoddeson UDC v Broxbourne Sand and Ballast Pits Ltd* [1936] 2 KB 19, [1936] 1 All ER 798.

8 Mines (Working Facilities and Support) Act 1966 s 12(1)(c).

9 Ibid s 12(1)(d).

10 As to references to the working of minerals see PARA 384 note 3 ante.

11 See the Mines (Working Facilities and Support) Act 1966 s 12(1). Notwithstanding anything in s 12, any restrictions the imposition of which appears to the court to be justified as mentioned in s 7A(1) (as added) (see PARA 391 text to note 6 ante): (1) may be imposed under s 7 (as amended) on the application of, and so as to vest the right to enforce the restrictions in, any such company, authority or body as is mentioned in s 12; and (2) may be so imposed on the application of, and so as to vest the right to enforce the restrictions in: (a) the Environment Agency or any water or sewerage undertaker; (b) any gas transporter within the meaning of the Gas Act 1986 Pt I (ss 1-48) (as amended); or (c) any company or other body or person carrying on an undertaking primarily for the supply of electricity or hydraulic power, for public purposes or to members of the public: see the Mines (Working Facilities and Support) Act 1966 s 7A(4) (s 7A added by the Coal Industry Act 1994 s 67(1), Sch 9 para 10(4); amended by the Gas Act 1995 s 16(1), Sch 4 para 2(2)(c); and the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1). For the meaning of 'court' see PARA 385 note 11 ante. As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; WATER AND WATERWAYS vol 100 (2009) PARA 17. As to water and sewerage undertakers see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 999 et seq; WATER AND WATERWAYS vol 100 (2009) PARA 108. As to the meaning of 'gas transporter' (previously known as a 'public gas transporter') see the Utilities Act 2000 s 76(1) (as substituted and amended), s 76(7); and FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 805 et seq. As to the supply of electricity see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1041.

For the purposes of the Transport Act 1947 Pt II (ss 12-28) (repealed) and the Transport Act 1962 Pt II (ss 31-41) (as amended), the provision set out in the text is deemed to have been enacted before those Acts: see the Mines (Working Facilities and Support) Act 1966 s 12(2). See further the Transport Act 1947 s 14(3), (4) (repealed) (transfer to the British Transport Commission (now the British Railways Board) of certain rights and liabilities under agreements and statutory provisions); the Transport Act 1962 s 35(1), Sch 6 (as amended) (distribution of the undertaking of the British Transport Commission); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES.

UPDATE

392 Saving for railways, canals, local authorities and statutory bodies

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(3) STATUTORY RIGHTS OF WORKING/(i) Mines (Working Facilities and Support) Act 1966/B. OBTAINING A GRANT; COMPENSATION/393. Applications for grant of rights.

B. OBTAINING A GRANT; COMPENSATION

393. Applications for grant of rights.

An application for the grant of working facilities¹ must be sent to the Secretary of State², and the applicant for an ancillary right³ for the purpose of or in connection with working any minerals⁴ may be a person either having or applying for the right to work those minerals⁵. The application must set out the circumstances alleged to justify the grant of the right, and must be in such form and accompanied by such information verified in such manner as the Secretary of State may direct⁶.

The Secretary of State must consider the application and refer the matter to the High Court⁷ unless, after communication with such interested parties, if any, as he may think fit⁸, he is of the opinion that a *prima facie* case is not made out⁹.

Where the application relates to a right to obtain a supply of water, or a right to dispose of water or other liquid matter, or any other right which appears to the Secretary of State to affect any local authority¹⁰, the Secretary of State, before referring the matter to the High Court, must send a copy of the application to the local authority in order to enable it to take such steps as it thinks fit for placing its views before the court¹¹.

1 To obtain a grant of a right under the Mines (Working Facilities and Support) Act 1966 s 1 (as amended): see PARA 384 et seq ante.

2 As to the Secretary of State see PARA 4 ante.

3 As to ancillary rights see PARA 387 ante.

4 As to references to working minerals see PARA 384 note 3 ante. As to references to rights to work minerals see PARA 387 note 3 ante. As to the meaning of 'minerals' see PARA 12 note 23 ante.

5 See the Mines (Working Facilities and Support) Act 1966 s 4(1).

6 See *ibid* s 4(2).

7 Under the Mines (Working Facilities and Support) Act 1923 Pt I (ss 1-14) (repealed: see PARA 383 note 3 ante) applications were formerly referred to the Railway and Canal Commission, but on the dissolution of that Commission under the Railway and Canal Commission (Abolition) Act 1949 its functions in this regard devolved on the High Court: s 1(1)(a).

8 Where it is alleged that the right in question cannot be obtained by reason of any person not having the necessary powers of disposition, or having unreasonably refused to grant it, or having demanded terms which are unreasonable, the Secretary of State may not refer the application to the court without first communicating with that person: see the Mines (Working Facilities and Support) Act 1966 s 4(3) proviso.

9 See *ibid* ss 4(3), 14(1). As to the function of the Secretary of State under s 4(3) see *Re W J King & Sons Ltd's Application* [1976] 1 All ER 770 at 777-778, [1976] 1 WLR 521 at 530, 531, CA.

10 It is submitted that the obligation under this provision is operative only where the application appears to affect the local authority directly. Local authorities now have relatively restricted functions in relation to those matters: see WATER AND WATERWAYS vol 100 (2009) PARA 395 et seq. The rights of local authorities are protected further: see PARA 392 ante. 'Local authority' is not defined for these purposes.

11 See the Mines (Working Facilities and Support) Act 1966 s 4(4).

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394. Limitation on power to grant rights.

No grant of working facilities¹ is to be made unless the court is satisfied that the grant is expedient in the national interest², and unless it is shown that it is not reasonably practicable to obtain the right in question by private arrangement for any of the following reasons:

- 177 (1) that the persons with power to grant the right are numerous or have conflicting interests³;
- 178 (2) that the persons with power to grant the right, or any of them, cannot be ascertained or cannot be found⁴;
- 179 (3) that the persons from whom the right must be obtained, or any of them, have not the necessary powers of disposition⁵, whether by reason of defect in title⁶, legal disability or otherwise⁷;
- 180 (4) that the person with power to grant the right⁸ unreasonably refuses to grant it or demands terms which, having regard to the circumstances, are unreasonable⁹.

1 le a grant under the Mines (Working Facilities and Support) Act 1966 s 1 (as amended): see PARA 384 et seq ante.

2 See *ibid* s 3(1); and PARA 384 ante.

3 See *ibid* s 3(2)(a). This would apply eg where the minerals underlie numerous small parcels of land in separate ownership: see PARA 385 ante; and *Re Walsall Wood Colliery Co Ltd's Application* [1939] 2 KB 817, [1939] 3 All ER 864.

4 See the Mines (Working Facilities and Support) Act 1966 s 3(2)(b). Head (2) in the text is satisfied if, by reason of the number of small parcels (eg resulting from allotments under an Inclosure Act or award) or otherwise, it is not reasonably practicable to ascertain: (1) who are the owners; or (2) whether the surface owners have or have not the right to support of the surface and so to prohibit the working of the underlying minerals: see *Re Walsall Wood Colliery Co Ltd's Application* [1939] 2 KB 817, [1939] 3 All ER 864.

5 Having regard to the provision relating to estates in land and powers of disposition contained in the Law of Property Act 1925, the Settled Land Act 1925 and kindred statutes (see PARAS 285 et seq, 371 et seq ante), it is thought that only in very exceptional cases can the difficulty as to want of powers of disposition arise. As to the phasing out of strict settlements and the introduction of the 'trust of land' see the Trusts of Land and Appointment of Trustees Act 1996 s 2(1); and PARA 285 note 2 ante.

6 'Defect in title' may include cases where the title is doubtful.

7 See the Mines (Working Facilities and Support) Act 1966 s 3(2)(c). The words 'or otherwise', although they are to be construed ejusdem generis with the words which precede, are nonetheless wide enough to embrace a restriction on disposition imposed by an Inclosure Act award: *Walsall Wood Colliery Co Ltd's Application* [1939] 2 KB 817, [1939] 3 All ER 864.

8 As to references to persons whose concurrence is necessary for the exercise of a right see PARA 385 note 16 ante.

9 See the Mines (Working Facilities and Support) Act 1966 s 3(2)(d). In the case of a quarry an application to buy the land is a sufficient compliance with the statutory requirement that an application must be made for a right to work the minerals, since the working of the quarry involves destruction of the surface: *Re West of England Road Metal Co Ltd* [1936] 2 All ER 1607.

Unreasonableness is a matter of law, and it is a condition precedent to the grant of every application that the High Court should be satisfied that all powers of private arrangement between the parties have been

exhausted: see *Glassbrook Bros Ltd v Leyson* [1933] 2 KB 91, CA. In considering the question of reasonableness the court must take into consideration all the circumstances as they exist at the date of the hearing, including the circumstance that the court has formed the view that the national interest lies with one or the other of the competing proposals: *Archibald Russell Ltd v Nether Pollok Ltd* 1938 SC 1. As to the national interest see PARA 384 note 9 ante.

In deciding whether there has been an unreasonable refusal to grant the right applied for, or whether the terms demanded in negotiation are, having regard to the circumstances, unreasonable, the terms granted by the High Court are not to be applied as the test of unreasonableness: see *Glassbrook Bros Ltd v Leyson* supra. The court's jurisdiction is limited in this respect by the statute, and that jurisdiction cannot be extended by the finding of facts which would confer jurisdiction if there is no evidence to support such findings: see *Bunbury v Fuller* (1853) 9 Exch 111 at 140, Ex Ch, per Coleridge J; *R v Income Tax Special Purposes Comrs* (1888) 21 QBD 313 at 319, CA, per Lord Esher MR; *Glassbrook Bros Ltd v Leyson* supra at 107 per Lord Hanworth MR; *R v Fulham, Hammersmith and Kensington Rent Tribunal, ex p Philippe* [1950] 2 All ER 211, DC; *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147, [1969] 1 All ER 208, HL; *Pearlman v Keepers and Governors of Harrow School* [1979] QB 56, [1979] 1 All ER 365, CA; and see JUDICIAL REVIEW vol 61 (2010) PARAS 610 et seq, 655. The question whether or not there is evidence to support the findings of the court as to unreasonableness is a question of law: see *Shotts Iron Co v Fordyce* [1930] AC 503, HL; *Glassbrook Bros Ltd v Leyson* supra. It is not unreasonable of the owner of minerals to stipulate that the applicants should enter into a proper covenant to work; such a covenant is not equivalent to the reservation of a minimum rent, for breach of it may entitle the lessor to damages in excess of such rent: see *Glassbrook Bros Ltd v Leyson* supra; *Jegon v Vivian* (1871) 6 Ch App 742.

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395. References to the High Court.

Where a matter is referred¹ to the High Court, the court, if satisfied² that the requirements of the statute³ are complied with in the case of the applicant, and that the grant of a right is expedient in the national interest⁴, may by order⁵ grant the right on such terms⁶ and subject to such conditions, and for such period, as the court may think fit⁷. Upon such an order being made, the right specified in the order vests in the applicant, subject to the provisions set out below⁸. Where such a right is granted, the applicant must pay or give, to such persons as the High Court may determine to be entitled to it, such compensation⁹ or consideration in respect of the acquisition of the right as, in default of agreement, the court may determine¹⁰.

In determining the duration of any right to be granted, the High Court must have regard (1) to the time reasonably necessary to enable the minerals to be fully worked; and (2) where the applicant's interest in any minerals is an interest as lessee¹¹, to the duration of such interest¹².

Where the right applied for is a right to let down the surface¹³, the High Court, in determining whether the right should be granted, must have regard (a) to the value of the minerals required for the support of any works or buildings or intended works or buildings on or below the surface as compared with the value of the buildings or works, and as to whether the support of the buildings or works or intended buildings or works is in the national interest more important than the working of the minerals¹⁴; and (b) if there are no such buildings or works, to the extent to which the use of the surface for the purposes for which it is used or is intended to be used will be prejudicially affected by subsidence, and as to whether the support of the surface is in the national interest more important than the working of the minerals required for its support¹⁵.

In determining whether any right should be granted, or the conditions upon which any such right should be granted, the High Court must have regard to all the circumstances of the case¹⁶, and in particular to the extent to which the retention of any minerals is required for the protection of mines or other works from flooding, or for any other mining purpose, and, so far as relevant, to the royalties, covenants and conditions reserved by or contained in the applicant's existing mining lease¹⁷ or leases, if any, or customary in mining leases in the district¹⁸.

The High Court has a complete discretion in awarding costs¹⁹.

1 Ie under the Mines (Working Facilities and Support) Act 1966 s 4 (as amended): see PARA 393 ante. For the procedure on such a reference see PARA 398 post.

2 Ie if upon the evidence before the High Court it comes to the reasonable conclusion that the requirements referred to are complied with: see *R v Bloomsbury Income Tax Comrs, ex p Hooper* [1915] 3 KB 768, DC.

3 Ie the Mines (Working Facilities and Support) Act 1966: see PARA 383 et seq ante. The right applied for must be within the ambit of the Act. As to rights outside the Act see eg *Consett Iron Co Ltd v Clavering Trustees* [1935] 2 KB 42, CA (application to vary financial terms of existing lease); *Hoddesdon UDC v Broxbourne Sand and Ballast Pits Ltd* [1936] 2 KB 19, [1936] 1 All ER 798 (application to let down public highway, tantamount to its extinguishment); *Re Tilmanstone (Kent) Collieries Ltd* [1928] 1 KB 599, CA, where it was argued unsuccessfully that the grant of a wayleave over the surface of land beyond the boundaries of the mine premises was not within the statute.

4 See the Mines (Working Facilities and Support) Act 1966 s 3(1); and PARA 384 note 9 ante.

5 As to interim orders see PARA 398 note 22 post. A form of order on an application to work granite, including ancillary rights, is indicated in *Re West of England Road Metal Co Ltd* [1936] 2 All ER 1607 at 1612 per MacKinnon J.

6 'Terms' here does not include 'financial terms': see *Consett Iron Co Ltd v Clavering Trustees* [1935] 2 KB 42, CA; *Re Sherwood Colliery Co Ltd* [1939] 1 All ER 88.

7 See the Mines (Working Facilities and Support) Act 1966 s 5(1). As to the court's responsibility as guardian of the public interest see PARA 384 note 9 ante. The Coal Industry Act 1994 s 38 (right to withdraw support) (see PARA 178 ante) does not affect any restrictions, terms or conditions applicable to the working of coal by virtue of any order made (whether before or after the restructuring date) under the Mines (Working Facilities and Support) Act 1966 s 1 (as amended) or s 7 (as amended) (acquisition of rights to work minerals): see the Coal Industry Act 1994 s 40(2)(a); and PARAS 178 et seq, 391 ante.

8 Mines (Working Facilities and Support) Act 1966 s 5(1). See also note 16 infra. On an application to assign the rights granted the assignee must be represented in order that they may be accepted by him before the court: *Re Bolsover Colliery Co Ltd's Application* [1940] WN 218.

9 As to compensation see further PARA 397 post. Compensation will be ordered only in respect of land wholly within the application area; and a local authority or sewerage undertaker will not be entitled to compensation for damage to sewers under the surface of the application area unless it is also the owner of the surface: *Re National Coal Board's Application* [1960] Ch 192, [1959] 3 All ER 58.

10 See the Mines (Working Facilities and Support) Act 1966 s 5(2). It is suggested that the words 'in default of agreement' contemplate that when the court has decided to grant the right applied for and the terms and conditions subject to which the right is granted, the parties concerned are to have the opportunity, if they so desire, to agree the compensation or consideration to be paid or given. As to the principles on the basis of which compensation is to be determined by the court see PARA 397 post.

11 As to the meaning of 'lessee' see PARA 385 note 6 ante.

12 See the Mines (Working Facilities and Support) Act 1966 s 5(3). It has been questioned (but not decided to the contrary) whether there is jurisdiction to grant an anticipatory claim: see *Consett Iron Co Ltd v Clavering Trustees* [1935] 2 KB 42 at 73, CA, per Slessor, LJ; cf *Re West of England Road Metal Co Ltd* [1936] 2 All ER 1607. A refusal to grant a right to work at a distant date is not res judicata but is without prejudice to a future application: *Re Manners Colliery Co Ltd* (1926) 42 TLR 773.

13 Is a right under the Mines (Working Facilities and Support) Act 1966 s 2(1)(a): see PARA 387 ante. As to the meaning of 'surface' see PARA 386 note 6 ante.

14 See *ibid* s 2(2)(a).

15 See *ibid* s 2(2)(b). See *Re Wolstanton Ltd's Application* [1952] Ch 519 at 527 per Danckwerts J (sub nom *Re National Coal Board's Application* [1952] 1 All ER 678n): 'I have to weigh against the national interest, which requires the working of these minerals, the prejudicial effect on the property of surface owners likely to be caused by subsidence. The latter is undoubtedly a serious matter to owners of property who are compelled by their circumstances to live or do their business in a mining area, but it may be that, subject to compensation for the pecuniary loss caused to them in respect of their property, they must, by reason of the overwhelming national interest in having the output of coal maintained or increased, submit, as a section only of the community, to the inconvenience which is thereby caused to them'. It is submitted that Danckwerts J's finding of 'overwhelming national interest' in having the output of coal maintained or increased was a reflection of the economic circumstances and political values prevailing at the time, and that it might no longer be sustainable. For a reflection of more recent circumstances and values see the Coal Industry Act 1994 s 2(1)(a) (see PARA 60 ante), which refers to the maintenance and development of 'an economically viable coal-mining industry'. See also *Re Nunnery Colliery Co's Application* (1924) 69 Sol Jo 52.

16 An obligation to pay for damage that might arise in the future from subsidence should be treated as a term or condition on or subject to which a right might be granted under the Mines (Working Facilities and Support) Act 1966 s 5(1), but such a payment should not be regarded as compensation under s 5(2); therefore the question whether an obligation to make such a payment should be imposed must be determined on the principle enacted by s 5(4), namely by having regard to all the circumstances of the case: *Re National Coal Board's Application* [1960] Ch 192, [1959] 3 All ER 58; not following *Re Beckermat Mining Co Ltd's Application* [1938] 1 All ER 389. On that basis (or indeed even if the true basis is that payment for such damage is compensation within the Mines (Working Facilities and Support) Act 1966 s 5(2)), an objector who owns part of the surface of the application area might be able to obtain compensation for future damage by subsidence, including consequential damage such as loss of profits, and not be limited to a measure confined to covering physical damage to land and buildings: *Re National Coal Board's Application* supra.

17 As to the meaning of 'lease' see PARA 385 note 6 ante.

18 See the Mines (Working Facilities and Support) Act 1966 s 5(4). The royalties, covenants and conditions contained in the applicant's existing mining lease or leases, if any, or customary in mining leases in the district would seem to afford the most cogent evidence as to the terms and conditions of grants as between willing grantor and willing grantee. However, the court is not precluded from awarding compensation or consideration in the form of a lump sum: *Re Associated Portland Cement Manufacturers Ltd's Application* [1966] 1 Ch 308 at 324, [1965] 2 All ER 547 at 554 per Buckley J. As to the granting of facilities under the Petroleum Act 1998 see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1666.

19 *Re National Coal Board's Application* [1960] Ch 192, [1959] 3 All ER 58. If in the case of an application for the grant of a right under the Mines (Working Facilities and Support) Act 1966 s 1, Table para 1 (as substituted and amended) (see PARA 385 ante), or Table para 3(2) (repealed), it is proved to the satisfaction of the court that there is good cause for requiring the applicant to give security for any costs which may be ordered to be paid by him to any person affected by the application, the court has power to make an order that all proceedings upon the application must be stayed until such security for the costs of that person as may be required by the order has been given to the satisfaction of the court, and may order the payment into the Supreme Court of the whole or any part of any sum so required to be paid by way of such security: see s 5(5). Contrast an application for ancillary rights made by the holder of a petroleum licence, for which see the Petroleum Act 1998 s 7(4)(c), (d); and FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1666.

UPDATE

395 References to the High Court

NOTE 19--For 'Supreme Court' substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 4 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(3) STATUTORY RIGHTS OF WORKING/(i) Mines (Working Facilities and Support) Act 1966/B. OBTAINING A GRANT; COMPENSATION/396. Application by more than one applicant.

396. Application by more than one applicant.

Where separate applications are made by two or more persons for the right to work the same minerals¹ and are referred to the court², the court, in addition to the matters already mentioned³, must determine which, if any, of the applicants is to be preferred, or whether the right to work one part of the minerals should be granted to one applicant and the right to work another part should be granted to another applicant, having regard to the question as to how the minerals can be most conveniently worked, to the respective rights of the applicants in the surface⁴ or adjacent⁵ minerals, and generally to all the circumstances of the case⁶.

This provision applies, subject to the necessary modifications, to applications, for an ancillary right⁷, and so that the ancillary right may be granted to the applicants, or to any two or more of them, jointly⁸.

1 As to references to working minerals see PARA 384 note 3 ante. As to references to rights to work minerals see PARA 387 note 3 ante. As to the meaning of 'minerals' see PARA 12 note 23 ante.

2 For the meaning of 'court' see PARA 385 note 11 ante.

3 See PARA 395 ante.

4 As to the meaning of 'surface' see PARA 386 note 6 ante.

5 As to the meaning of 'adjacent' see PARA 385 note 21 ante.

6 See the Mines (Working Facilities and Support) Act 1966 s 6(1). In *Re J and J Charlesworth Ltd and Henry Briggs, Son & Co Ltd* (1926) 43 TLR 100, the parties agreed to divide the area of coal in question between them, but the Railway and Canal Commission (which then had jurisdiction: see PARA 393 note 7 ante) ruled that it was not bound by the agreement and must consider the national interest. Accordingly, it required certain modifications to the agreement. See also *J C Jenkins & Co Ltd v Lancaster's Steam Collieries Ltd* (1924) 1 Bamber's Mining Cases 100.

7 As to ancillary rights see PARA 387 ante.

8 See the Mines (Working Facilities and Support) Act 1966 s 6(2).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(3) STATUTORY RIGHTS OF WORKING/(i) Mines (Working Facilities and Support) Act 1966/B. OBTAINING A GRANT; COMPENSATION/397. Compensation on grant or restriction.

397. Compensation on grant or restriction.

Where a right by way of working facilities is granted¹ or any restriction on the working of minerals is imposed², the High Court may determine the amount and nature of compensation or consideration to be paid or given, and the persons to whom it is to be paid or given, either at the time when it determines whether the right should be granted or the restriction imposed or at any subsequent time³.

The compensation or consideration in respect of any such right, including the right to enforce restrictions, must be assessed by the High Court on the basis of what would be fair and reasonable between a willing grantor and a willing grantee⁴, having regard to the conditions subject to which the right is or is to be granted⁵. Where the person to whom any compensation or consideration is payable cannot be found or ascertained, the compensation or consideration must be paid into court⁶.

The High Court may impose as a condition on the grant of any right or the imposition of any restriction that any compensation or consideration payable in respect of it must be paid, or that security to the satisfaction of the court for the payment of it must be given, before the right is commenced to be exercised or the restriction is enforced⁷.

1 Ie under the Mines (Working Facilities and Support) Act 1966 s 1 (as amended): see PARA 384 et seq ante. As to references to right to work minerals see PARA 387 note 3 ante. As to references to working minerals see PARA 384 note 3 ante. As to the meaning of 'minerals' see PARA 12 note 23 ante.

2 Ie under *ibid* s 7 (as amended): see PARA 390 ante.

3 See *ibid* s 8(1). This provision does not detract from the right of the applicants and the parties concerned to agree between themselves what consideration or compensation should be paid or given: see PARA 395 note 10 ante. For exceptions to the right to compensation see PARAS 391, 395 note 9 ante.

4 A willing grantor is a free agent, not required by compulsory powers to grant (see *IRC v Clay* [1914] 3 KB 466 at 473, CA, per Cozens-Hardy MR), one who is prepared to make the grant provided a fair consideration is obtained in all the circumstances of the case; he is not a grantor prepared to grant at any price and on any terms and who is actually at the time wishing to grant; he is not an anxious grantor (*IRC v Clay* supra at 478 per Pickford LJ). The principles to be applied in determining compensation under the Mines (Working Facilities and Support) Act 1966 s 8, are those which have been applied in determining compensation under the Lands Clauses Consolidation Act 1845 s 63 (see also the Compulsory Purchase Act 1965; and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 810): *BP Petroleum Developments Ltd v Ryder* [1987] 2 EGLR 233, [1987] RVR 211; and see *Re Naylor Benzon Mining Co Ltd* [1950] Ch 567, [1950] 1 All ER 518. These principles are summarised by Peter Gibson J in *BP Petroleum Developments Ltd v Ryder* supra at 246 and 229 as follows: 'The grantor must receive consideration or compensation on the basis of the value of what he has lost, not on the basis of the value to the grantee of what he is acquiring. The value is of the rights over land with its existing use and subject to its existing restrictions, but together with all its potentialities; and, subject to not receiving more than he has lost the landowner is entitled to compensation for disturbance and injurious affection as well. The existence of the scheme underlying the compulsory acquisition must be disregarded, but the presence in the market of a purchaser for whom the rights have a special value may be taken into account. The loss of the bargaining power of the landowner through his veto which he enjoyed until compulsory powers are invoked by the making of the application is not a factor to be taken into account'. See, however, the criticism of the reasoning in *BP Petroleum Developments Ltd v Ryder* supra by Judge Hague QC in *Mercury Communications Ltd v London and India Dock Investments Ltd* [1994] 1 EGLR 229 at 236. The principles upon which a minimum rent may be imposed by way of compensation are discussed in *Re Sherwood Colliery Co Ltd* [1939] 1 All ER 88. A lump sum may be awarded, and in assessing such a sum no deduction on account of income tax need be made: *Re Associated Portland Cement Manufacturers Ltd's Application* [1966] 1 Ch 308, [1965] 2 All ER 547. In apportioning royalties between the tenant and the landlord all special circumstances are taken into account: *Re*

Markham Main Colliery Ltd (1925) 41 TLR 672; and see *Re Trusts affecting Compensation Moneys in respect of Coal Holdings, Public Trustee v Manchester Corpn* [1949] Ch 737, [1949] 2 All ER 498.

5 Mines (Working Facilities and Support) Act 1966 s 8(2). Special provisions apply on the grant of a right under s 2(3): see PARA 387 note 18 ante.

6 Ibid s 8(4). The High Court, in any case where it thinks fit, may order the payment into court of the whole or any part of any compensation or consideration determined by it, and, pending the determination of the amount of this compensation or consideration, may order the payment into court of such sum on account as it thinks fit: see s 8(3). Payments into court must be made into the Supreme Court: see s 8(6)(a).

7 See ibid s 8(5).

UPDATE

397 Compensation on grant or restriction

NOTE 5--See *Bocardo SA v Star Energy UK Onshore Ltd* [2009] EWCA Civ 579, [2010] Ch 100, [2010] 1 All ER 26.

NOTE 6--For 'Supreme Court' substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 4 (in force 1 October 2009: SI 2009/1604).

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398. Procedure on applications.

Where, under any provision of the Mines (Working Facilities and Support) Act 1966, the Secretary of State¹ refers any application to the High Court, he must lodge the reference, signed by him or by an officer authorised by him for the purpose, in Chancery Chambers, together with all documents and plans deposited with him by the applicant², and within three days after doing so he must give notice to the applicant of the filing of the reference³.

Within ten days after receipt of that notice⁴ the applicant must issue a claim form which need not be served on any other party⁵. Within seven days after issue of the claim form the applicant, having applied at Chancery Chambers for the name of the master assigned to hear the claim, must take an appointment before that master for the hearing of the claim and must forthwith serve notice of the appointment on the Secretary of State⁶. On the appointment the master must fix a time within which any notice of objection⁷ must be given⁸, fix a date for the further hearing of the claim⁹ and direct what, if any, advertisements and notices of the application and of the date fixed for the further hearing of the claim are to be inserted and given, and what persons, if any, are to be served with a copy of the application and of any other document in the proceedings¹⁰.

Any person wishing to oppose the application must, within the time fixed by the master¹¹, serve on the applicant a notice of objection¹². An objector is entitled to appear in person or by a solicitor or counsel at the further hearing of the claim and to take such part in the proceedings as the master or judge thinks fit; but if he does not so appear his notice of objection is of no effect and he is not entitled to take any part in the proceedings unless the master or judge otherwise orders¹³.

Not less than two clear days before the day fixed for the further hearing of the claim, the applicant must leave at Chancery Chambers any notices of objection served on the applicant together with a list arranged in three columns stating: (1) the names and addresses of the objectors; (2) the names and addresses of their respective solicitors, if any; and (3) short summaries of their respective grounds of objection¹⁴.

At the further hearing the master must give directions as to the procedure to be followed before the claim is set down for hearing¹⁵ and adjourn the claim for hearing before the judge in such manner as he thinks best adapted to secure the just, expeditious and economical disposal of the proceedings¹⁶.

In so far as they are not inconsistent with the procedure described above the ordinary rules applicable in the Chancery Division have effect in relation to the proceedings¹⁷. Appeals lie, in accordance with the provisions of general application, to the Court of Appeal and the House of Lords¹⁸.

The Secretary of State and any other government department must give to the High Court such assistance as the court may require for the purposes of its duties under the Mines (Working Facilities and Support) Act 1966, and are entitled to appear and be heard at any proceedings on any application before the court under that Act¹⁹.

Any proceedings in which the jurisdiction conferred on the High Court by the Railway and Canal Commission (Abolition) Act 1949²⁰ is invoked must be assigned to the Chancery Division and be begun by claim form which need not be served on any other party²¹.

1 As to the Secretary of State see PARA 4 ante.

2 CPR Sch 1, RSC Ord 96 r 2(a).

3 CPR Sch 1, RSC Ord 96 r 2(b).

4 Ie the notice mentioned in CPR Sch 1, RSC Ord 96 r 2(b).

5 CPR Sch 1, RSC Ord 96 r 3.

6 CPR Sch 1, RSC Ord 96 r 4(1). Not less than two clear days before the day appointed for the first hearing of the claim, the applicant must leave at Chancery Chambers a witness statement or affidavit of facts in support of the claim, giving particulars of all persons known to the applicant to be interested in or affected by the application (CPR Sch 1, RSC Ord 96 r 4(2)(a)), and a draft of any proposed advertisement or notice of the application (CPR Sch 1, RSC Ord 96 r 4(2)(b)).

7 Ie under CPR Sch 1, RSC Ord 96 r 5.

8 CPR Sch 1, RSC Ord 96 r 4(3)(a).

9 CPR Sch 1, RSC Ord 96 r 4(3)(b).

10 CPR Sch 1, RSC Ord 96 r 4(3)(c). Any such advertisement or notice must include a statement of the effect of CPR Sch 1, RSC Ord 96 r 5: CPR Sch 1, RSC Ord 96 r 4(4).

11 Ie under CPR Sch 1, RSC Ord 96 r 4(3).

12 See CPR Sch 1, RSC Ord 96 r 5(1). The notice must state his name and address and that of his solicitor, if any; the grounds of his objection and any alternative methods of effecting the objects of the application which he alleges may be used; and the facts on which he relies: see CPR Sch 1, RSC Ord 96 r 5(1)(a)-(c). Any notice required to be served on a person who has given notice of objection may be served by delivering it or sending it by prepaid post where the name and address of a solicitor is stated in the notice of objection, to the solicitor at that address, and in any other case, to the objector at his address stated in the notice of objection: CPR Sch 1, RSC Ord 96 r 5(2).

13 CPR Sch 1, RSC Ord 96 r 5(3).

14 CPR Sch 1, RSC Ord 96 r 6.

15 Ie including, if he thinks fit, a direction that further particulars be given of any of the grounds or facts relied on in support of or in opposition to the application made by the summons, that the applicant may serve a reply to any notice of objection, that any particular fact be proved by witness statement or affidavit, that statements of case or points of claim or defence be served: CPR Sch 1, RSC Ord 96 r 7(a).

16 CPR Sch 1, RSC Ord 96 r 7(b).

17 For the ordinary rules applicable in the Chancery Division see CIVIL PROCEDURE. The court has no inherent jurisdiction to make an interim order pending final determination of the application, but it is possible that it has such jurisdiction under the Mines (Working Facilities and Support) Act 1966 itself: see *Re W J King & Sons Ltd's Application* [1976] 1 All ER 770 at 778-779, [1976] 1 WLR 521 at 531-532, CA; cf *Re National Coal Board's Application* [1958] 2 All ER 351n, [1958] 1 WLR 599.

18 See COURTS.

19 See the Mines (Working Facilities and Support) Act 1966 s 9 (amended by the Minister of Technology Order 1969, SI 1969/1498, arts 2(1), 5(8); the Secretary of State for Trade and Industry Order 1970, SI 1970/1537, arts 2(2), 7(4); the Secretary of State (New Departments) Order 1974, SI 1974/692; the Transfer of Functions (Energy) Order 1992, SI 1992/1314; and the Coal Industry Act 1994 s 67(8), Sch 11 Pt II).

20 Ie under the Railway and Canal Commission (Abolition) Act 1949 s 1. Applications were formerly referred to the Railway and Canal Commission, but on the dissolution of that Commission under the Railway and Canal Commission (Abolition) Act 1949 its functions in that regard devolved on the High Court: s 1(1)(a).

21 See CPR Sch 1, RSC Ord 96 r 1.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(3) STATUTORY RIGHTS OF WORKING/(ii) Working Rights for Coal in relation to Underground Land/399. Rights for coal in relation to underground land.

(ii) Working Rights for Coal in relation to Underground Land

399. Rights for coal in relation to underground land.

Under the Coal Industry Act 1994¹ a licensed operator², or any person authorised³ to act on his behalf in the carrying on of any of the operations which the operator is authorised to carry on, is entitled at any time on or after the restructuring date⁴ to exercise certain rights⁵ in relation to any underground land in the area in which the operator in question is authorised to carry on coal-mining operations⁶.

The Coal Authority⁷ and persons authorised by the Authority to exercise its rights under these provisions⁸ are also entitled at any time on or after the restructuring date to exercise those rights in relation to any underground land in relation to which there is not for the time being any person who, as a licensed operator, is authorised to carry on any coal-mining operations to which the licensing requirements apply⁹.

The rights which may be so exercised are the rights (1) to enter upon, remove, execute works in, pass through or occupy that land; or (2) to do any acts requisite or convenient for the carrying on of any coal-mining operations¹⁰. However, the right may only be exercised for certain purposes, that is to say, in relation to a licensed operator or a person authorised to act on his behalf, the carrying on of any coal-mining operations and, in relation to the Authority, any purposes connected with the carrying out of its functions under the Coal Industry Act 1994¹¹.

Nothing in these provisions authorises:

- 181 (a) any interference with the carrying on of any underground operations carried on otherwise than for purposes connected with any coal-mining operations¹²;
- 182 (b) the withdrawal of support from any land¹³ or any interference with the surface of any land¹⁴;
- 183 (c) the doing of any act which, apart from these provisions, would be actionable by virtue of (i) any liberty, privilege, easement, advantage or other right annexed to any other land¹⁵; (ii) any restrictive covenant; or (iii) any statutory prohibition or restriction, which adversely affects the land in question¹⁶; or
- 184 (d) the doing of any act which, apart from these provisions, would be actionable as a trespass or nuisance¹⁷ and, if done, would be likely to cause actual damage of more than a purely nominal amount¹⁸.

Moreover, nothing in these provisions confers any right to search for, bore for or get any oil or gas which is or becomes absorbed in or adsorbed to any coal¹⁹; nor is anything in these provisions to be taken to authorise a contravention of the licensing requirements²⁰ or of any of the conditions of a licence²¹.

1 ie the Coal Industry Act 1994 s 51. These provisions replace the provisions of earlier legislation; the rights conferred by virtue of the Coal Act 1938 s 15 (repealed), the Coal Industry Nationalisation Act 1946 s 8(1) (repealed) and the Control of Pollution Act 1974 s 25 (repealed) (which made provision similar to that made by the Coal Industry Act 1994 s 51, and extended such provision to waste disposal), or by virtue of any of those provisions, are not exercisable at any time on or after the restructuring date (ie 31 October 1994: see PARA 3 note 9 ante): see s 51(8).

- 2 For the meaning of 'licensed operator' see PARA 60 note 12 ante.
- 3 Ie authorised as mentioned in the Coal Industry Act 1994 s 27(4): see PARA 94 ante.
- 4 See note 1 supra.
- 5 See the text and note 10 infra.
- 6 Coal Industry Act 1994 s 51(1). As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante.
- 7 As to the Coal Authority see PARA 52 et seq ante.
- 8 See the text and note 10 infra.
- 9 Coal Industry Act 1994 s 51(2). This entitlement is subject to the provisions of s 5(6): see PARA 65 ante. As to the licensing requirements see PARA 91 et seq ante.
- 10 Ibid s 51(3).
- 11 Ibid s 51(4).
- 12 Ibid s 51(5)(a).
- 13 As to the right under the Coal Industry Act 1994 to withdraw support from land see PARA 178 ante.
- 14 Ibid s 51(5)(b).
- 15 For these purposes, the reference to a liberty, privilege, easement, advantage or other right being annexed to any land is a reference to its appertaining to that land or any part of it, to its being demised, occupied or enjoyed with that land or any part of it or to its being reputed or known as part or parcel of the land or as appurtenant to the land or any part of it: ibid s 51(6).
- 16 Ibid s 51(5)(c).
- 17 As to trespass see TORT vol 97 (2010) PARA 524 et seq; and as to nuisance see NUISANCE.
- 18 Coal Industry Act 1994 s 51(5)(e).
- 19 Ie any such right as is mentioned in ibid s 9(1)(b) (as amended): see PARA 69 ante. As to oil and gas see FUEL AND ENERGY.
- 20 Ie ibid s 25(1): see PARA 91 ante.
- 21 Ibid s 51(7). As to the licensing requirements generally and the conditions of a licence under Pt II (ss 25-36) (as amended) see PARA 91 et seq ante.

UPDATE

399 Rights for coal in relation to underground land

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(3) STATUTORY RIGHTS OF WORKING/ (iii) Statutory Right to work Coal in former Copyhold Land/400. Right to work coal in former copyhold land.

(iii) Statutory Right to work Coal in former Copyhold Land

400. Right to work coal in former copyhold land.

Where any coal¹ or coal mine² is comprised in or lies under land which was formerly copyhold³ and a relevant notice specifying the area in which that land is comprised has been given⁴ and has come into force or has been published before the restructuring date⁵ in accordance with the statutory provisions then in force⁶, the relevant person⁷ has the like right in relation to that coal or coal mine to carry on coal-mining operations to which the licensing requirements apply⁸ as if all retained interests⁹ in that coal or mine subsisting on 31 August 1975 were vested in him, notwithstanding that they are by virtue of any enactment in fact vested in another person¹⁰.

There are provisions for compensation and certain other matters where a relevant notice is given or has been published¹¹.

The publication of a relevant notice does not prevent any person from acquiring by agreement any retained interest in any coal or coal mine comprised in or lying under land in the area to which the notice relates¹².

1 For the meaning of 'coal' see PARA 50 note 10 ante.

2 As to the meaning of 'coal mine' see PARA 5 note 15 ante.

3 See note 9 infra; and CUSTOM AND USAGE; REAL PROPERTY.

4 Ie in accordance with the Coal Industry Act 1994 s 50, which applies with respect to the giving of a notice for the purposes of s 49 at any time on or after the restructuring date (see note 5 infra): s 50(1). The only person who may give the notice is a person who is authorised by a licence under Pt II (ss 25-36) (as amended) (see PARA 91 et seq ante) or by virtue of s 25(3) (see PARA 91 ante) to carry on coal-mining operations in the area specified in the notice: s 50(2). The notice must: (1) indicate the land to which it relates either by reference to a map or in any other manner which, in the circumstances, is sufficient to identify it; (2) identify the person by whom the notice is given and summarise the respects in which the requirements of s 50(2) are satisfied in relation to that person; (3) state that there are proposals to carry on coal-mining operations in relation to any coal or coal mine which may require the exercise in relation to that land of such a right as is mentioned in s 49(1) (see the text and note 10 infra); and (4) invite the owners of retained interests (see note 9 infra) in any coal or coal mine comprised in or lying under the land in the area to which the notice relates to give notice of their interests, within the period which begins with the date of the first publication of the notice and ends six years after the coming into force of the notice, to the person who gave the notice: s 50(3). The notice must be given by being published in the London Gazette, and at least once in each of two successive weeks in newspapers circulating in the locality where the land to which the notice relates is situated: s 50(4). A notice given for these purposes at any time on or after the restructuring date comes into force when particulars of it are first registered by the Coal Authority in accordance with s 56 (see PARA 108 ante): s 49(6). As to the Coal Authority see PARA 52 et seq ante. As to the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

The Authority must not enter any notice given for the purposes of s 49 on or after the restructuring date in the register (ie the register maintained under s 56: see PARA 108 ante) unless it is satisfied that the notice has been properly given in accordance with the requirements of the Coal Industry Act 1994: see s 56(3).

5 Ie 31 October 1994: see PARA 3 note 9 ante.

6 Ie the Coal Industry Act 1975 s 3 (repealed), which contained provisions equivalent to the provisions of the Coal Industry Act 1994 ss 49, 50. See also note 11 infra. Subject to s 49(1)-(8), the rights conferred on the British Coal Corporation by the Coal Industry Act 1975 s 3 (repealed) are not exercisable at any time on or after the restructuring date: Coal Industry Act 1994 s 49(9). As to the British Coal Corporation see PARAS 2-3 ante.

7 For these purposes, the relevant person, in relation to any relevant notice, is: (1) in the case of a notice given in accordance with *ibid* s 50 (see note 4 *supra*), the person who gave the notice; and (2) in the case of a notice published in accordance with the Coal Industry Act 1975 s 3 (repealed) (see note 11 *infra*), the British Coal Corporation: Coal Industry Act 1994 s 49(2).

In so far as:

- 122 (a) a person other than the relevant person is for the time being a licensed operator in relation to the coal or mine which is comprised in, or lies under, the land comprised in the area specified in a relevant notice; and
- 123 (b) compensation under s 49, Sch 7 Pt I (see PARA 402 post) or, in relation to times before the restructuring date, under the Coal Industry Act 1975 s 3(4) (repealed) (see note 11 *infra*) either has become due in respect of any retained interest (see note 9 *infra*) affected by that notice and has been paid in full or would have become due in respect of such an interest but for an agreement under the Coal Industry Act 1994 Sch 7 para 8 (see PARA 402 post) or the Coal Industry Act 1975 s 3, Sch 2 para 8 (repealed) (see note 11 *infra*),

the person mentioned in head (a) *supra* is entitled (instead of the relevant person) to exercise the relevant person's rights by virtue of the Coal Industry Act 1994 s 49(1): s 49(3). For the meaning of 'licensed operator' see PARA 60 note 12 *ante*. In the case of any licensed operator who is entitled by virtue of s 49 to carry on any coal-mining operations in relation to any coal or coal mine, the rights comprised in his entitlement are also exercisable by any person authorised as mentioned in s 27(4) (see PARA 94 *ante*) to act on his behalf in the carrying on of any of the operations which the operator is authorised to carry on: s 49(4).

8 *le ibid* s 25: see PARA 91 *ante*.

9 For the meaning of 'retained interest' see PARA 1 note 9 *ante* (definition applied by *ibid* s 49(8)). However, all retained interests except those which are interests in coal or a mine of coal in or under land formerly copyhold have vested in the Corporation: see PARAS 2-3 *ante*.

10 *Ibid* s 49(1). Nothing in these provisions confers any such right as is mentioned in s 9(1)(b) (as amended) (see PARA 69 *ante*) or is to be taken to authorise a contravention of s 25(1) (see PARA 91 *ante*) or any of the conditions of a licence under Pt II (as amended) (see PARA 91 *et seq ante*); and the rights that are conferred on the Corporation by these provisions have effect subject to any transfer of those rights, in accordance with any restructuring scheme, to any other person: s 49(5). As to restructuring schemes see PARA 73 *ante*.

11 See *ibid* s 49(7), Sch 7; and PARAS 401-403 post.

Where notice of a retained interest was given before the restructuring date by virtue of the Coal Industry Act 1975 s 3 (repealed) (see note 6 *supra*), certain provisions of that Act continue to have effect instead of the corresponding provisions of the Coal Industry Act 1994 Sch 7: see Sch 7 para 12.

12 See *ibid* Sch 7 para 10. However, at any time after an acceptance notice (see PARA 401 post) has been served in respect of a retained interest, the person who served it ceases to be entitled to acquire by agreement that interest or any other retained interest in any coal or coal mine comprised in or lying under any of the land in which the accepted interest subsists: Sch 7 para 8(3). This does not prejudice the making of agreements with respect to compensation (see PARA 402 post): see Sch 7 para 8(3).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(3) STATUTORY RIGHTS OF WORKING/ (iii) Statutory Right to work Coal in former Copyhold Land/401. Claims in respect of retained interests.

401. Claims in respect of retained interests.

At any time after the restructuring date¹ and in pursuance of an invitation contained in a relevant notice², the claimant of compensation may give a retained interest³ notice⁴. The claimant must furnish, together with the retained interest notice, adequate proof of his title to the interest at the time when he gives the notice⁵.

Where any of the British Coal Corporation's⁶ rights in relation to any land⁷ have been transferred in accordance with a restructuring scheme⁸ to any other person (1) the persons to whom a retained interest notice relating to that land may be given for these purposes are the Corporation, the Coal Authority⁹ or that other person; and (2) a retained interest notice given to the Corporation or the Authority must be forwarded by the Corporation or Authority, as soon as reasonably practicable after being received, to that other person and is to be treated for these purposes as if given to that other person when it was given to the Corporation or Authority¹⁰.

Within the period of three months beginning with the date on which the person to whom it is given receives a retained interest notice, or within such longer period as may be agreed between that person and the claimant, that person must serve on the claimant either an acceptance notice in the prescribed form¹¹ accepting the claimant's title to the retained interest and acknowledging that compensation is payable¹² or a rejection notice rejecting the claimant's retained interest notice¹³. Where a person serves an acceptance notice or a rejection notice, he must at the same time send a copy of that notice to the Authority¹⁴. A person who fails to comply with any of these requirements as to the service of notices, or as to the sending of a copy of any notice to the Authority is guilty of an offence¹⁵.

Where, after the receipt by any person of a retained interest notice, an acceptance notice is served in respect of the retained interest concerned, the service of that acceptance notice is a valid ground for the service of a rejection notice in respect of any other retained interest which is received by any person after the service of that acceptance notice and relates to any of the land in which the accepted interest subsists¹⁶.

As soon as practicable after any person has served an acceptance notice on a claimant, that person must pay to the claimant any reasonable legal expenses incurred by the claimant for the purposes of establishing his ownership of the retained interest to which the acceptance notice relates and giving the retained interest notice by virtue of which the acceptance notice came to be served¹⁷.

A claimant who has served a retained interest notice relating to any land and who is aggrieved by the service on him of a rejection notice relating to his retained interest notice¹⁸ may, within the period of three months beginning with the date of service of the rejection notice, make an application to the county court for an order directing the withdrawal of the rejection notice and the service of an acceptance notice in respect of the retained interest which he claims¹⁹.

On such an application, the court may direct that, in addition to the applicant and the person who served the rejection notice, the Authority and any person other than the claimant who has given a retained interest notice relating to the whole or any part of the relevant land is to be made a party to the application unless, in the case of a person other than the claimant who has given a retained interest notice (a) a rejection notice has already been served in respect of that retained interest notice; and (b) the time within which that person might have made an application under these provisions in respect of that rejection notice has expired without such an application having been made²⁰.

The court must determine whether the applicant or any other party to the application who contests the applicant's claim or any other person (whether a party to the application or not) on whom an acceptance notice relating to the whole or any part of relevant land has been served was, at the time when he gave his retained interest notice, entitled to a retained interest in the whole or any part of the relevant land; and the court must order service (if it has not already been done) of an acceptance notice or, if more than one of them were so entitled to a retained interest in the same piece of land, on that one of them whose retained interest notice was given first²¹.

1 Ie 31 October 1994: see PARA 3 note 9 ante.

2 As to the relevant notice see PARA 400 ante.

3 For the meaning of 'retained interest' see PARA 1 note 9 ante (definition applied by the Coal Industry Act 1994 s 49(8)).

4 See *ibid* s 49, Sch 7 para 1(1), (2).

5 *Ibid* Sch 7 para 2.

6 As to the British Coal Corporation see PARAS 2-3 ante.

7 Ie under the Coal Industry Act 1994 s 49: see PARA 400 ante.

8 As to restructuring schemes see PARA 73 ante.

9 As to the Coal Authority see PARA 52 et seq ante.

10 Coal Industry Act 1994 Sch 7 para 1(3).

11 For these purposes, 'prescribed' means prescribed by regulations made by the Secretary of State by statutory instrument; and a statutory instrument containing regulations under this provision is subject to annulment in pursuance of a resolution of either House of Parliament: *ibid* Sch 7 para 3(7). As to the form prescribed see the Coal Industry (Retained Copyhold Interests) Regulations 1994, SI 1994/2562. As to the Secretary of State see PARA 4 ante.

12 Ie that an obligation under the Coal Industry Act 1994 Sch 7 Pt I to pay compensation in respect of the retained interest has arisen or will arise if the right in question is exercised: see Sch 7 para 3.

13 See *ibid* Sch 7 para 3(1), (2). A rejection notice must specify the ground or grounds on which the claimant's retained interest notice is rejected and, where the matters specified concern only a part of the land to which the retained interest notice relates, must identify the part in question: Sch 7 para 3(5).

14 *Ibid* Sch 7 para 3(3).

15 *Ibid* Sch 7 para 3(4). Such a person is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale: Sch 7 para 3(4). As to the standard scale see PARA 98 note 12 ante.

16 *Ibid* Sch 7 para 3(6).

17 *Ibid* Sch 7 para 4.

18 Ie other than a rejection notice served in pursuance of an order under *ibid* Sch 7 para 5: see the text and notes 19-21 *infra*.

19 *Ibid* Sch 7 para 5(1).

20 *Ibid* Sch 7 para 5(2).

21 *Ibid* Sch 7 para 5(3). An order under Sch 7 para 5(3) may contain such provisions as the court considers appropriate (1) for securing that every party to the application other than (a) the person to whom the retained interest notice in question was given; and (b) any person on whom an acceptance notice has been or is ordered to be served, is or has been served with a rejection notice; and (2) where it appears to the court that an acceptance notice has been served which should not have been served, for securing (a) that the notice is cancelled; and (b) that the person who served the notice brings the cancellation to the attention of the person

who, if the notice had not been cancelled, would have been the person with an actual or contingent entitlement to compensation under Sch 7 Pt I in respect of the accepted interest: Sch 7 para 5(4). If, in accordance with this provision, the court orders the cancellation of an acceptance notice, it must be conclusively presumed for the purposes of s 49 and s 50 (see PARA 400 ante) and for the purposes of Sch 7 (except Sch 7 para 5) that the person on whom the acceptance notice was served did not have a retained interest in the relevant land at the time when he served his retained interest notice and that a rejection notice was served in respect of that retained interest notice: Sch 7 para 5(5). As to contingent entitlement to compensation see PARA 402 note 11 post.

Nothing in Sch 7 para 4 (see the text and note 17 supra) affects the power of the court on an application under Sch 7 para 5 (or in any subsequent proceedings) to make such order as to costs as it thinks fit; and any such order may make such modifications, if any, of a person's obligation under Sch 7 para 4 as appear to the court to be just in the light of other provisions as to costs which are contained in the order: Sch 7 para 5(6).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(3) STATUTORY RIGHTS OF WORKING/ (iii) Statutory Right to work Coal in former Copyhold Land/402. Compensation in respect of retained interests.

402. Compensation in respect of retained interests.

Where any person has begun to exercise any right¹ in relation to any coal² or coal mine³ comprised in or lying under any land in which a retained interest⁴ subsists, and a right to compensation has not arisen under this provision in respect of the exercise of the right by a person whose right it was previously, then the person who has begun to exercise the right must pay compensation in respect of that interest⁵. Compensation is to be calculated by reference to the consideration which, on the date on which the exercise of the right began, would have been appropriate, as between a willing grantor and a willing grantee, on a conveyance of that interest⁶ to the person who exercises that right⁷. Where compensation is due to any person, any reasonable valuation expenses incurred by him for the purpose of ascertaining the value, at the date referred to, of the retained interest to which the compensation relates must be paid to him in addition to the compensation⁸. Any dispute as to the amount of any compensation or as to the amount of any valuation expenses to be paid must be determined by the Lands Tribunal⁹.

The person having the right to receive compensation in respect of a retained interest to which an acceptance notice¹⁰ relates is the person on whom that notice was served, notwithstanding that he may not own the retained interest at the time when the compensation becomes due; and accordingly that right devolves on his death and may be assigned in like manner as the right of a creditor under an unsecured debt¹¹.

If, at the time when compensation becomes due in respect of a retained interest, any compensation is paid in good faith to the person who produces the acceptance notice relating to that interest, the surrender of that notice by way of receipt for the compensation constitutes an adequate discharge to the person paying the compensation of his liability to pay that compensation, without any further proof that the person producing the acceptance notice is entitled to receive the compensation¹².

If at any time after an acceptance notice has been served in respect of a retained interest, and before the date on which compensation becomes due in respect of that interest, any person ('the relevant person') enters into an agreement in that behalf with another person (being the person with the contingent entitlement to any such compensation) then, on payment to that other person of such consideration as may be agreed, the relevant person is relieved of any contingent liability under these provisions in respect of that retained interest¹³.

Where any person makes a payment of compensation under these provisions¹⁴ or enters into an agreement relieving him of contingent liability¹⁵, he must, as soon as reasonably practicable after making the payment or entering into the agreement, send particulars of the payment or agreement to the Coal Authority¹⁶.

A person who fails to comply with any of the requirements as to the sending of any particulars to the Authority is guilty of an offence¹⁷.

1 le any right which is a right of his under the Coal Industry Act 1994 s 49(1): see PARA 400 ante.

2 For the meaning of 'coal' see PARA 50 note 10 ante.

3 As to the meaning of 'coal mine' see PARA 5 note 15 ante.

4 For the meaning of 'retained interest' see PARA 1 note 9 ante (definition applied by the Coal Industry Act 1994 s 49(8)).

5 Ibid s 49, Sch 7 para 6(1). Where a person who has become liable for any compensation under this provision ceases to be a person who is entitled to exercise the right in question, his so ceasing affects neither his liability nor the amount of the compensation: Sch 7 para 6(3). However, Sch 7 para 6(3) is subject to so much of any restructuring scheme as makes provision for the transfer to any other person, as from the restructuring date (ie 31 October 1994: see PARA 3 note 9 ante) or any subsequent date, of any of the British Coal Corporation's liabilities (ie by virtue of Sch 7 para 6): see Sch 7 para 6(6). As to restructuring schemes see PARA 73 ante. As to the British Coal Corporation see PARAS 2-3 ante.

6 Ie so far as it subsists in the land subject to the right: see ibid Sch 7 para 6(2).

7 Ibid Sch 7 para 6(2).

8 See ibid Sch 7 para 6(4).

9 Ibid Sch 7 para 6(5). The powers of the Lands Tribunal by virtue of this provision in respect of the costs of proceedings before the tribunal are not prejudiced by Sch 7 para 6(4) (see the text and note 8 supra): see Sch 7 para 6(6). As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

10 As to acceptance notices see PARA 401 ante.

11 Coal Industry Act 1994 Sch 7 para 7(2). Subject to Sch 7 para 5 (see PARA 401 ante), it must be conclusively presumed that a person on whom a rejection notice has been served has neither an actual nor, as the case may be, a contingent entitlement to compensation under these provisions in respect of the interest to which the notice relates: Sch 7 para 7(1). As to rejection notices see PARA 401 ante.

References, in relation to any right under s 49(1) (see PARA 400 ante), to a person with a contingent entitlement to compensation under Sch 7 Pt I are references to any person who would be entitled to any such compensation if the person with that right began to exercise it: Sch 7 para 6(7).

12 Ibid Sch 7 para 7(3).

13 Ibid Sch 7 para 8(1). Where any such agreement is entered into, Sch 7 para 7(3) (see the text and note 12 supra) applies in relation to the payment of the consideration agreed as it applies in relation to a payment of compensation at the time referred to in that provision: Sch 7 para 8(2).

14 Ie under ibid Sch 7 Pt I.

15 Ie an agreement for the purposes of ibid Sch 7 para 8: see the text and note 13 supra.

16 Ibid Sch 7 para 9(1). As to the Coal Authority see PARA 52 et seq ante.

The particulars to be sent to the Authority include particulars identifying: (1) the person to whom the payment is made or, as the case may be, the parties to the agreement; and (2) the interest in respect of which the payment is made or, as the case may be, in respect of which the contingent liability extinguished by the agreement arose: Sch 7 para 9(2).

As to registration of this information see s 56; and PARA 108 ante.

17 Ibid Sch 7 para 9(3). Such a person is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale: Sch 7 para 9(3). As to the standard scale see PARA 98 note 12 ante.

UPDATE

402 Compensation in respect of retained interests

TEXT AND NOTE 9--References to the Lands Tribunal are now to the Upper Tribunal: Coal Industry Act 1994 Sch 7 para 6(5), (6) (amended by SI 2009/1307).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/6. RIGHT TO WORK MINERALS/(3) STATUTORY RIGHTS OF WORKING/ (iii) Statutory Right to work Coal in former Copyhold Land/403. Prior rights.

403. Prior rights.

If (1) the British Coal Corporation¹ was, on 31 August 1975, entitled² to work any coal³ or to use any coal mine⁴ in which a retained interest⁵ subsisted at that time; (2) that entitlement has continued throughout the period since that date as an entitlement of the Corporation or, at different times, of the Corporation and a person to whom the Corporation's rights have been transferred in accordance with a restructuring scheme⁶; and (3) the Corporation or such person is still so entitled, then the provisions relating to the working of coal in or under land which was formerly copyhold⁷ do not apply with respect to that coal or coal mine or to any retained interest in it except in relation to matters unconnected with the exercise of that entitlement⁸. Where, on or after the restructuring date⁹, a notice which is given for the purposes of those provisions specifies any area and at the time when the notice was published the above conditions¹⁰ were satisfied in relation to any coal or coal mine comprised in or lying under land in that area, then so much of that land as consists of that coal or coal mine is deemed to be excluded from that area¹¹. If notice of a retained interest is given¹² at a time when the above conditions¹³ were satisfied in relation to any coal or coal mine comprised in or lying under the land in which that interest subsists, then for the purpose of determining the amount of any compensation under these provisions that interest so far as it relates to that coal or mine must be treated as no longer subsisting¹⁴.

1 As to the British Coal Corporation see PARAS 2-3 ante.

2 I.e. by virtue of an order under the Mines (Working Facilities and Support) Act 1966 s 1 (as amended) (see PARAS 384-387 ante) or by any agreement: see the Coal Industry Act 1994 s 49, Sch 7 para 11(1).

3 For the meaning of 'coal' see PARA 50 note 10 ante.

4 As to the meaning of 'coal mine' see PARA 5 note 15 ante.

5 For the meaning of 'retained interest' see PARA 1 note 9 ante (definition applied by the Coal Industry Act 1994 s 49(8)).

6 As to restructuring schemes see PARA 73 ante.

7 I.e. the Coal Industry Act 1994 s 49: see PARA 400 ante. As to copyhold see CUSTOM AND USAGE; REAL PROPERTY.

8 Ibid Sch 7 para 11(1).

9 I.e. 31 October 1994: see PARA 3 note 9 ante.

10 See heads (1)-(3) in the text.

11 Coal Industry Act 1994 Sch 7 para 11(2).

12 I.e. in pursuance of an invitation to give notice of retained interests (see PARA 400 ante): see ibid Sch 7 para 11(3), (4).

13 See heads (1)-(3) in the text.

14 Coal Industry Act 1994 Sch 7 para 11(3).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/7. OPENCAST WORKING OF COAL/(1) INTRODUCTION/(i) The Opencast Coal Act 1958/404. Introduction.

7. OPENCAST WORKING OF COAL

(1) INTRODUCTION

(i) The Opencast Coal Act 1958

404. Introduction.

Before the Opencast Coal Act 1958¹ came into operation², power to take possession of and to use land for the purpose of opencast coal mining³ was conferred by the Defence (General) Regulations 1939⁴. These emergency powers were revoked⁵ and replaced by the comprehensive scheme of the Opencast Coal Act 1958⁶. Provisions of that Act which required opencast operations by the British Coal Corporation⁷ to be authorised and provided for the grant of planning permission for such operations by ministerial direction, have been repealed⁸; and the Act was modified to take account of the restructuring of the coal industry under privatisation by the Coal Industry Act 1994. Although the government found it unsatisfactory for the coal industry to have access to special procedures not available in relation to other minerals, procedures under the Opencast Coal Act 1958 continued to be available for a transitional period⁹. However, certain powers contained in the Opencast Coal Act 1958 (namely, the power to make a compulsory rights order¹⁰, the power to make an order suspending a right of way¹¹, the power to make orders conferring rights for the purposes of drainage or water supply¹², and the power to make a direction designating land for prospecting¹³) have not been exercisable since 31 December 1999¹⁴. The Act has not been repealed, and many of its provisions, particularly those relating to compensation¹⁵, continue to have some relevance.

1 The Opencast Coal Act 1958 does not extend to Northern Ireland: s 53(3).

2 It came into operation on 30 September 1958: see *ibid* s 53(2) (repealed).

3 As to whether an opencast working is a mine see *PARA 5 ante*.

4 See the Defence (General) Regulations 1939, SR & O 1939/927, regs 51, 51A (revoked).

5 As to the transitional provisions to which this was subject see the Requisitioned Land and War Works Act 1945 ss 28(2), 30(1) (repealed); the Land Powers (Defence) Act 1958 s 1(2); and the Opencast Coal Act 1958 s 48 (repealed), Sch 10 paras 5, 42 (repealed). Any reference in the Opencast Coal Act 1958 to an enactment must be construed as a reference to that enactment as amended by or under any other enactment: s 51(9).

6 See *PARA 405 et seq post*.

7 As to the British Coal Corporation see *PARAS 2-3 ante*.

8 See the Opencast Coal Act 1958 ss 1, 2 (both repealed). The repeal of ss 1, 2 did not affect a direction given under s 2 before the day on which the repeal of that section came into operation, and any repeal by the Housing and Planning Act 1986 of an enactment relating to directions under the Opencast Coal Act 1958 s 2 has no effect in relation to directions whose effect is continued by the Housing and Planning Act 1986 s 39(1): see s 39(1), (2). Section 39 came into force on 11 December 1987: see the Housing and Planning Act 1986 (Commencement No 9) Order 1987, SI 1987/1939.

9 In 1993, the Minister for Energy announced that the government found it unsatisfactory for the coal industry to have access to special procedures (such as those governing the compulsory acquisition of rights to explore for and work opencast coal under the Opencast Coal Act 1958) which were not generally available: see

233 HC Official Report (6th series), 2 December 1993, written answers col 735. It was intended that there should be a review of the powers, available in relation to minerals generally, contained in the Mines (Working Facilities and Support) Act 1966, and that any new powers available in respect of opencast coal after 31 December 1999 should form part of a new general regime for all minerals: see eg the Department of Trade and Industry Press Release P/93/719 (2 December 1993); and the Department of Trade and Industry consultative document entitled *Review of Mining Legislation - The Compulsory Acquisition of Rights Over Land for Mineral Development* (February 1995). As to the regime for minerals generally under the Mines (Working Facilities and Support) Act 1966 see PARA 383 et seq ante.

- 10 See PARA 422 et seq post.
- 11 See PARA 415 et seq post.
- 12 See PARA 421 post.
- 13 See PARAS 411-412 post.
- 14 See the Coal Industry Act 1994 s 52(1); and PARA 405 post.
- 15 See PARA 452 et seq post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/7. OPENCAST WORKING OF COAL/(1) INTRODUCTION/(i) The Opencast Coal Act 1958/405. Powers under the Opencast Coal Act 1958.

405. Powers under the Opencast Coal Act 1958.

Under the Opencast Coal Act 1958, for the purpose of facilitating the working of coal by opencast operations, the Coal Authority¹ had power, by means of a compulsory rights order made by the Authority and confirmed by the Secretary of State², to confer³ temporary rights of occupation and use of any land⁴ on which the applicant for the order desired to work coal⁵ by such operations or to carry out operations incidental to such working⁶. When such an order has been made, compensation in respect of it is payable⁷.

There was also a power to suspend certain public rights of way⁸, to acquire rights for the purposes of drainage and water supply⁹, and to designate land for the purpose of prospecting¹⁰.

The powers mentioned above have not been exercisable since 31 December 1999¹¹.

The Act also makes particular provision as to agricultural tenancies in England and Wales¹². The provisions of the Act apply to certain special cases subject to modification¹³, and there are powers to modify the Act itself by regulations in order to adapt it to special circumstances¹⁴.

1 As to the Coal Authority see PARA 52 et seq ante.

2 As to the Secretary of State see PARA 4 ante. In deciding whether or not to confirm a compulsory rights order, the Secretary of State needs to be satisfied in any particular case that there is a wider public interest in allowing the coal to be worked which is sufficient to override the normal rights of a landowner to withhold consent for development on his land: see Annex F to MPG 3: *Coal Mining and Colliery Spoil Disposal*.

3 Ie in accordance with the provisions of the Opencast Coal Act 1958 Pt I (ss 4-16) (as amended): see s 4(1) (as amended); and PARA 422 post.

4 'Land' includes land covered by water: ibid s 51(1).

5 'Coal' means bituminous coal, cannel coal and anthracite: ibid s 51(1).

6 See ibid s 4(1) (as amended). As to compulsory rights orders see PARA 422 et seq post. See also the text and note 11 infra. As to the period for which a compulsory rights order may have effect see PARA 423 post.

7 See ibid Pt II (ss 17-36) (as amended); and PARA 452 et seq post. As to types of compensation payable see PARA 452 et seq post.

8 As to the suspension of public rights of way see PARA 415 post.

9 As to rights as to drainage or water supply see PARA 421 post.

10 As to entry on land for the purpose of prospecting see PARA 411-412 post.

11 See the Coal Industry Act 1994 s 52(1). See also PARA 404 ante. Section 52(1) provides that the following powers under the Opencast Coal Act 1958 are not exercisable at any time after 31 December 1999: (1) the power to make a compulsory rights order (see PARA 422 post); (2) the power under s 15 (as substituted and amended) (see PARA 415 et seq post) to make an order suspending a right of way; and (3) the power to make an order under s 16 (as amended) (orders conferring rights for the purposes of drainage or water supply) (see PARA 421 post), and the Secretary of State may not, at any time after that date, give a direction designating any land for the purposes of s 39(2) (as amended) (rights of entry) (see PARA 411 post) except on an application made to him before that date by the Coal Authority. As to the regime for minerals generally under the Mines (Working Facilities and Support) Act 1966 see PARA 383 et seq ante.

Subject to the Coal Industry Act 1994 s 52(1) and to any transfers in accordance with a restructuring scheme of any rights or liabilities under the Opencast Coal Act 1958, the Opencast Coal Act 1958 has effect on and after the restructuring date (ie 31 October 1994: see PARA 3 note 9 ante) with the amendments specified in the Coal

Industry Act 1994 s 52(2), Sch 8 (which as well as making other minor amendments of the Opencast Coal Act 1958, makes the modifications, in relation to the period before 31 December 1999, which are requisite for enabling orders under that Act to be made in favour of persons other than the British Coal Corporation): Coal Industry Act 1994 s 52(2). As to restructuring schemes see PARA 73 ante. As to the meaning of 'modifications' see PARA 50 note 4 ante.

Section 52(1) is without prejudice to the effect after 31 December 1999 of anything done under the Opencast Coal Act 1958 on or before that date or generally to the operation of that Act in relation to anything so done: Coal Industry Act 1994 s 52(3).

12 See eg para 419 et seq post.

13 Eg with respect to matters arising between landlords and tenants, mortgagees and mortgagors, and in respect of mining leases or orders conferring working rights (see PARA 435 et seq post), with respect to tenancies of allotments (see PARAS 451, 491-493 post), and with respect to land held for religious purposes (see PARA 506 post).

14 See eg the Opencast Coal Act 1958 s 34, Sch 6 para 29.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/7. OPENCAST WORKING OF COAL/(1) INTRODUCTION/(i) The Opencast Coal Act 1958/406. Application to Crown land.

406. Application to Crown land.

In general, the Opencast Coal Act 1958 applies in relation to land¹ in which there is a Crown or Duchy interest² as it applies to land in which there is no such interest³. However, subject to any express provision in the Act to the contrary⁴, the provisions of the Act do not apply to any land in which there is a Crown or Duchy interest, but no private interest⁵ other than any interest belonging to the Coal Authority⁶.

1 As to the meaning of 'land' see PARA 405 note 4 ante.

2 'Crown or Duchy interest' means an interest belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belonging to the Duchy of Cornwall, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department: Opencast Coal Act 1958 s 44(4). As to Crown land generally see CROWN PROPERTY.

3 See ibid s 44(1), which applies with necessary modifications in relation to land which is subject to a right restrictive of its use, being a right the benefit of which is annexed to land in which there is a Crown or Duchy interest, or, not being so annexed, belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belongs to the Duchy of Cornwall, or belongs to a government department, or is held in trust for Her Majesty for the purposes of a government department, as it applies in relation to land in which there is a Crown or Duchy interest: see s 44(5).

4 See eg ibid s 44(5) proviso, which excludes the exception.

5 'Private interest' means an interest which is not a Crown or Duchy interest (see note 2 supra): ibid s 44(4).

6 Ibid s 44(1) proviso (amended by the Coal Industry Act 1987 s 1(2), Sch 1 para 7(c); and the Coal Industry Act 1994 s 52(2), Sch 8 paras 1, 33(a)). As to the Coal Authority see PARA 52 et seq ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/7. OPENCAST WORKING OF COAL/(1) INTRODUCTION/(i) The Opencast Coal Act 1958/407. Protection from compulsory purchase.

407. Protection from compulsory purchase.

Where a compulsory purchase order¹ has been submitted or prepared, and the land² comprised in the order includes land in respect of which opencast planning permission³ has been granted and is for the time being occupied by a relevant person⁴ for the purpose of carrying on the permitted activities⁵, and within the time limited for making objections to the order, that relevant person gives notice of that fact to the Secretary of State⁶ to whom the order has been submitted, or by whom it has been prepared, as the case may be, specifying the land in respect of which the permission was granted and which is so occupied⁷, the compulsory purchase order must not be confirmed or made so as to authorise the compulsory purchase of any of the land specified in that notice, unless the Secretary of State is satisfied that it can be purchased without serious detriment to the permitted activities⁸.

1 le a compulsory purchase order within the meaning of the Acquisition of Land Act 1981: see generally COMPULSORY ACQUISITION OF LAND.

2 As to the meaning of 'land' see PARA 405 note 4 ante.

3 'Opencast planning permission' means planning permission which permits the working of coal by opencast operations or the carrying out of operations incidental to such working: Opencast Coal Act 1958 s 51(1) (definition added by the Housing and Planning Act 1986 s 39(3), Sch 8 Pt I para 13(a); and amended by the Coal Industry Act 1987 s 1(2), Sch 1 para 7(c); and the Coal Industry Act 1994 s 52(2), Sch 8 paras 1, 36(1)(a)).

Where opencast planning permission has been granted, the telecommunications code para 23 (as amended) (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) applies for the purposes of any permitted activities to the person with the benefit of that permission: Opencast Coal Act 1958 s 45(2) (substituted by the Telecommunications Act 1984 s 109, Sch 4 para 38; and amended by the Housing and Planning Act 1986 s 39(3), Sch 8 Pt I para 12; and the Coal Industry Act 1994 s 52(2), Sch 8 para 34). As to the telecommunications code see the Telecommunications Act 1984 Sch 4 para 1; and TELECOMMUNICATIONS vol 97 (2010) PARA 151 et seq.

4 'Relevant person' means any licensed operator within the meaning of the Coal Industry Act 1994 or any person who is certified by the Coal Authority as a person whose application to that Authority for a licence under Pt II (ss 25-36) (as amended) is pending: Opencast Coal Act 1958 s 38 (definition added by the Coal Industry Act 1994 Sch 8 paras 1, 28(c)). For the meaning of 'licensed operator' see PARA 60 note 12 ante. As to the Coal Authority see PARA 52 et seq ante.

5 Opencast Coal Act 1958 s 38(a) (amended by the Housing and Planning Act 1986 Sch 8 Pt I para 9; the Coal Industry Act 1987 Sch 1 para 7(c); and the Coal Industry Act 1994 Sch 8 para 28(a), (b)). 'Permitted activities' means: (1) the working of coal by opencast operations pursuant to opencast planning permission and the carrying out of operations incidental to such working; and (2) the carrying out of any conditions subject to which opencast planning permission has been granted: Opencast Coal Act 1958 s 51(1) (definition added by the Housing and Planning Act 1986 Sch 8 Pt I para 13(b)).

Any reference in the Opencast Coal Act 1958 to the working of coal by opencast operations includes a reference to the getting and winning of coal worked by such operations, and to the carrying away of any such coal from the land on which it has been worked (s 51(5)) and any reference to the working of coal or other minerals on any land, or to the carrying out of any other operations on any land, must be construed as including a reference to the working of the coal or other minerals, or the carrying out of those operations, as the case may be, in or under that land (s 51(6)). Waste heaps and other deposits resulting from the working of minerals must be taken to form part of the land on which they are situated, if apart from s 51(7) they would not be taken to form part thereof, and any reference to the working of minerals on, in or under land, or to underground or surface working, must be construed accordingly: see s 51(7).

6 As to the Secretary of State see PARA 4 ante.

7 le occupied as mentioned in the Opencast Coal Act 1958 s 38(a) (as amended): see s 38(b) (amended by the Housing and Planning Act 1986 Sch 8 Pt I para 9; the Coal Industry Act 1987 Sch 1 para 7(c); and the Coal Industry Act 1994 Sch 8 para 28(a), (b)).

8 See the Opencast Coal Act 1958 s 38 (amended by the Housing and Planning Act 1986 Sch 8 Pt I para 9; the Coal Industry Act 1987 Sch 1 para 7(c); and the Coal Industry Act 1994 Sch 8 paras 1, 28(a), (b), (c); and by virtue of the Minister of Technology Order 1969, SI 1969/1498, arts 2(1), 5(6); and the Secretary of State for Trade and Industry Order 1970, SI 1970/1537, arts 2(2), 7(4)).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/7. OPENCAST WORKING OF COAL/(1) INTRODUCTION/(ii) Administration and Notices/408. Powers of the Secretary of State and the Coal Authority.

(ii) Administration and Notices

408. Powers of the Secretary of State and the Coal Authority.

The Secretary of State¹ has a general power to make regulations in accordance with the provisions of the Opencast Coal Act 1958². His confirmation was required for compulsory rights orders³, orders suspending certain public rights of way⁴, and orders conferring rights for the purposes of drainage or water supply⁵. He also had the power to give a direction designating land in relation to the powers of prospecting conferred by the Act⁶. Any expenses incurred for the purposes of the Act by the Secretary of State are payable out of the moneys provided by Parliament⁷.

The Coal Authority⁸ had the power to make compulsory rights orders⁹, orders suspending certain public rights of way¹⁰, and orders conferring rights for the purposes of drainage or water supply¹¹. The Authority also had the power to apply to the Secretary of State for a direction designating land in relation to the powers of prospecting conferred by the Act¹², and the power to authorise in writing persons to exercise such powers in relation to land so designated¹³.

The powers to make compulsory rights orders, orders suspending public rights of way, orders conferring rights for the purposes of drainage or water supply, and directions designating land for prospecting, have not been exercisable since 31 December 1999¹⁴.

1 As to the Secretary of State see PARA 4 ante.

2 See the Opencast Coal Act 1958 s 49(1); and PARA 409 post.

3 See *ibid* s 4(1) (as substituted and amended); and PARA 422 post.

4 See *ibid* s 15 (as substituted and amended); and PARAS 415-416 post.

5 See *ibid* s 16 (as amended); and PARA 421 post.

6 See *ibid* s 39(1) (as amended); and PARAS 411-412 post.

7 *Ibid* s 50.

8 As to the Coal Authority see PARA 52 et seq ante.

9 See the Opencast Coal Act 1958 s 4(1) (as substituted and amended); and PARA 422 post.

10 See *ibid* s 15 (as substituted and amended); and PARAS 415-416 post.

11 See *ibid* s 16 (as amended); and PARA 421 post.

12 See *ibid* s 39(1) (as amended); and PARAS 411-412 post.

13 See *ibid* s 39(2) (as amended); and PARA 411 post.

14 See PARA 405 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/7. OPENCAST WORKING OF COAL/(1) INTRODUCTION/(ii) Administration and Notices/409. Subordinate legislation.

409. Subordinate legislation.

The Secretary of State¹ may make regulations prescribing anything authorised or required to be prescribed for the purposes of any provision of the Opencast Coal Act 1958, or for the purposes of any enactment applied by or incorporated with it, except any provision whereby anything is expressly authorised or required to be prescribed by some other Minister of the Crown or government department².

Any power to make regulations or orders³ under the Act is exercisable by statutory instrument; and any instrument containing any such regulations or orders is subject to annulment in pursuance of a resolution of either House of Parliament⁴.

1 As to the Secretary of State see PARA 4 ante.

2 Opencast Coal Act 1958 s 49(1). Subject to the provisions of s 49 (as amended), any power conferred by the Act to make an order or give any directions includes power, subject to the like provisions and conditions, to vary or revoke the order or directions by a subsequent order or subsequent directions, as the case may be: s 49(4).

A compulsory rights order must not be varied by extending the period for which it is to have effect: s 49(5). However, where the period specified in the order is less than 20 years, s 49(5) (as amended) does not prevent the variation of the order by the extension of that period, if the period as extended does not exceed 20 years: see s 49(5) proviso (amended by the Coal Industry Act 1975 s 4(2), Sch 3 para 8). As to compulsory rights orders see PARA 422 et seq post. The power to make compulsory rights orders has not been exercisable since 31 December 1999: see PARA 405 ante. As to the duration, variation and revocation of compulsory rights orders see PARA 423 post.

A compulsory rights order may, by notice to the person entitled to the rights conferred by the order, be revoked at any time by the Coal Authority (as to which see PARA 52 et seq ante), if it is satisfied that that person has consented to the revocation; or by the Secretary of State, if he is satisfied that that person has contravened, or is contravening, any of the provisions of the order or any requirement otherwise imposed on that person by or under the Opencast Coal Act 1958: s 49(4A) (added by the Coal Industry Act 1994 s 52(2), Sch 8 para 35).

Where, in the case of any compulsory rights order made or confirmed at any time on or after the restructuring date (ie 31 October 1994: see PARA 3 note 9 ante), it appears to the Coal Authority: (1) that the order would not have been made or confirmed, or would not have extended to certain interests or rights, if a person to whom a relevant offer was made had accepted it; (2) that that person has, since the making of the order, made a written offer to the person entitled to the rights conferred by it ('the operator') to enter into an agreement on the terms of the relevant offer; (3) that the written offer was made either at a time before the specification of a date in relation to the order as the date of entry or at a time more than 28 days before any date so specified; (4) that the person making the offer will enter into an agreement with the operator on those terms if the order is revoked or varied under the Opencast Coal Act 1958 s 49(4B) (as added); and (5) that the circumstances (apart from the expiration or rejection of the relevant offer and the making and confirmation of the order) are not such as to make it unreasonable for the operator to be required to treat the terms of the relevant offer as still available for acceptance, that Authority may, by notice to the operator and subject to such conditions as it thinks fit, either revoke the order or vary it by limiting it so that it does not extend to the interests and rights of the person who is offering to be bound by an agreement on the terms he previously failed to accept: s 49(4B) (added by the Coal Industry Act 1994 Sch 8 para 35).

For this purpose, 'relevant offer', in relation to a compulsory rights order, means any offer which was made by the applicant for the order to a person who is one of the persons directly concerned; and was an offer as to the terms on which the applicant was willing (instead of requiring rights as against that person to be conferred by a compulsory rights order) to enter into an agreement with that person: Opencast Coal Act 1958 s 49(4C) (added by the Coal Industry Act 1994 Sch 8 para 35).

The provisions of the Opencast Coal Act 1958 s 49(4) do not affect the revocation of an order made by virtue of s 15 (as substituted and amended) (suspension of rights of way: see PARAS 415-416 post) where, in accordance with s 15(4) (as amended), the Secretary of State is required to revoke the order: s 49(6).

- 3 le orders under ibid s 26(5) (as amended); s 28(5) (as amended); and s 35(8): see s 49(3).
- 4 Ibid s 49(2), (3). As to the annulment of statutory instruments by Parliament generally see STATUTES.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/7. OPENCAST WORKING OF COAL/(1) INTRODUCTION/(ii) Administration and Notices/410. Inquiries.

410. Inquiries.

Certain provisions¹ which relate to local inquiries have effect in relation to any inquiry held under the Opencast Coal Act 1958 in relation to land in England or Wales².

¹ See the provisions of the Local Government Act 1972 s 250(2)-(5) (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 105.

² See the Opencast Coal Act 1958 s 47(2) (amended by the Local Government Act 1972 s 272(2); and the Acquisition of Land Act 1981 s 34, Sch 6 Pt I).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/7. OPENCAST WORKING OF COAL/(1) INTRODUCTION/(ii) Administration and Notices/411. Entry on land.

411. Entry on land.

The Opencast Coal Act 1958 provides that where it appears to the Secretary of State¹ to be expedient that any land² should be prospected: (1) for the purpose of ascertaining whether it contains coal³ suitable for working by opencast operations⁴, and, if so, what quantity of such coal it contains, and how the coal in question could best be so worked; or (2) for the purpose of ascertaining whether the land would be suitable for use for any purposes connected with the working of coal on any adjacent land by opencast operations, including purposes of access and of restoring land affected by the working of coal by such operations, the Secretary of State may on the application of the Coal Authority⁵ give a direction⁶ designating that land as land in relation to which, during such period as may be specified in the direction, certain powers⁷ are to be exercisable, subject to such conditions, if any, as may be specified in the direction⁸. However, this power to make directions has not been exercisable since 31 December 1999⁹.

Subject to certain provisions¹⁰, during any period for which, by virtue of such a direction, powers¹¹ are exercisable in relation to land designated in the direction, and subject to compliance with any conditions specified in the direction, any person authorised in writing by the Coal Authority may, at any reasonable time, for either of the purposes mentioned in head (1) or head (2) above¹²: (a) enter upon that land, or upon any other land to which entry is required for obtaining access to that land; (b) carry out on the designated land such operations as may be requisite, in relation to that land, for either of the purposes mentioned in head (1) or head (2) above; and (c) remove from the designated land any samples of minerals¹³ or of other substances obtained by carrying out any such operations, and dispose of any such samples as the Coal Authority may think fit to authorise him to dispose of¹⁴.

Where, in the exercise of such powers conferred, it is proposed to enter upon any land and carry out any operations there involving the excavation of the land, or the making of borings therein (i) the power to carry out those operations is not exercisable unless the notice¹⁵ included notice of the intention to carry out those operations; and (ii) if the land in question is held by the persons carrying on a statutory undertaking¹⁶, or by an internal drainage board, and those persons or that board object to the proposed operations on the ground that the carrying out of the operations would be seriously detrimental to the carrying on of their undertaking or, in the case of an internal drainage board, to the performance of their functions, the operations must not be carried out except with ministerial consent¹⁷.

Subject to the provisions of the Opencast Coal Act 1958¹⁸, any person authorised in writing by the Authority may, at any reasonable time, enter upon and survey any land, whether comprised in a direction¹⁹ or not (A) for any purpose in connection with, or preparatory to, an application for opencast planning permission or the making or confirmation of any order²⁰; or (B) where opencast planning permission has been granted, for any purpose in connection with, or preparatory to, the carrying on of any of the permitted activities or the performance of any functions prescribed²¹, not being a purpose for which a right of entry is exercisable apart from this head²²; or (C) for the purpose of estimating value, or assessing loss, in connection with any claim for compensation under the Act²³; or (D) for the purpose of affixing²⁴ on land any notice²⁵.

1 As to the Secretary of State see PARA 4 ante.

2 As to the meaning of 'land' see PARA 405 note 4 ante. Nothing in the Opencast Coal Act 1958 s 39 (as amended) authorises any person to enter upon any land which is covered by buildings: s 39(4).

3 For the meaning of 'coal' see PARA 405 note 5 ante.

4 As to references to working coal by opencast operations see PARA 407 note 5 ante. As to references to working coal see PARA 407 note 5 ante.

5 As to the Coal Authority see PARA 52 et seq ante.

6 As to the power to give directions see PARA 409 note 2 ante.

7 Ie the powers conferred by the Opencast Coal Act 1958 s 39(2) (as amended): see the text and notes 10-14 infra.

8 See *ibid* s 39(1) (amended by the Coal Industry Act 1994 s 52(2), Sch 8 paras 1, 29(1)). Any authorisation by the Coal Authority of any person for the purposes of the exercise of the powers conferred by the Opencast Coal Act 1958 s 39 (as amended), and any conditions of such an authorisation, may be revoked or varied by that Authority at any time: s 39(7B) (added by the Coal Industry Act 1994 Sch 8 para 29(5)).

Except with the consent of the appropriate authority the powers conferred by the Opencast Coal Act 1958 s 39 (as amended) are not exercisable in relation to land in which for the time being there is a Crown or Duchy interest (for the meaning of which see PARA 406 note 2 ante), but nothing in s 44 (as amended) (see PARA 406 ante) affects the validity or operation of an order, or the exercise of any power, as against any person having, in or over the land in question, any interest or right other than a Crown or Duchy interest: see s 44(2) proviso.

'The appropriate authority' means:

- 124 (1) in relation to land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners, and, in relation to any other land belonging to Her Majesty in right of the Crown, the government department having the management of the land (s 44(4)(a));
- 125 (2) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy (s 44(4)(b));
- 126 (3) in relation to land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of that Duchy, appoints (s 44(4)(c)); and
- 127 (4) in relation to land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that department (s 44(4)(d)).

If any question arises as to what authority is the appropriate authority in relation to any land, that question is to be referred to the Treasury, whose decision is final: s 44(4). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

9 See the Coal Industry Act 1994 s 52(1); and PARA 405 ante.

10 Ie subject to the Opencast Coal Act 1958 s 39(3)-(10) (as amended).

11 Ie the powers conferred by *ibid* s 39(2) (as amended): see the text and notes 10-14 infra.

12 Ie mentioned in *ibid* s 39(1) (as amended): see the text to note 8 supra.

13 As to the meaning of 'minerals' see PARA 12 note 22 ante.

14 Opencast Coal Act 1958 s 39(2) (amended by the Coal Industry Act 1987 s 1(2), Sch 1 para 7(c); and the Coal Industry Act 1994 Sch 8 para 29(2), (3)). However, nothing in the Opencast Coal Act 1958 s 39(2) (as amended) is to be construed as authorising any interference with the exercise of a public right of way, or any contravention of a prohibition or restriction imposed by or under an enactment (whether contained in a public general Act or in any other Act): s 39(2) proviso.

15 Ie under *ibid* s 39(5) (as amended): see PARA 412 post.

16 'Statutory undertakers' and 'statutory undertaking' have the same meanings as in the Town and Country Planning Act 1990 s 262 (as amended) (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1009): Opencast Coal Act 1958 s 51(1) (definition amended by the Planning (Consequential Provisions) Act 1990 Sch 3 para 3); see TOWN AND COUNTRY PLANNING. For the purposes of the Opencast Coal Act 1958 s 39(6)(b) (as amended), the Post Office and the Civil Aviation Authority are deemed to be statutory undertakers and their undertakings statutory undertakings: see the Post Office Act 1969 s 6 (as amended; prospectively repealed) (see POST OFFICE); and the Civil Aviation Act 1982 s 19, Sch 2 para 4 (as amended) (see AIR LAW vol 2 (2008) PARA 216).

17 See the Opencast Coal Act 1958 s 39(6) (amended by the Water Act 1989 s 190, Sch 25 para 26). As to who is the 'appropriate minister' see the Opencast Coal Act 1958 s 51(1) (substituted by the Secretary of State for Transport Order 1976, SI 1976/1775, art 6(1), Sch 3 para 2(1); and amended by the Gas Act 1986 s 67(4), Sch 9 Pt I; the Electricity Act 1989 s 112(4), Sch 18; the Water Act 1989 s 190(1), (3), Sch 25 para 26(5), Sch 27 Pt I; the Minister of Transport Order 1979, SI 1979/571, arts 2(1), 3(5); the Transfer of Functions (Transport) Order 1981, SI 1981/238, art 2(1)(a); the Transfer of Functions (Trade and Industry) Order 1983, SI 1983/1127; the Transfer of Functions (Energy) Order 1992, SI 1992/1314; the Secretary of State for the Environment, Transport and the Regions Order 1997, SI 1997/2971; the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001, SI 2001/1149, art 3(2), Sch 2; and by virtue of the Secretaries of State for Transport, Local Government and the Regions and for Environment, Food and Rural Affairs Order 2001, SI 2001/2568 (itself amended by SI 2002/2626)); and see the Water Act 1989 s 190(1), Sch 25 para 1(9), (10)(i) (Sch 25 para 1(9) amended by virtue of the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 3, Sch 2 para 4); the Gas Act 1995 s 16(1), Sch 4 para 2(10)(a); and the Electricity Act 1989 s 112(1), Sch 16 para 3(1)(b) (amended by the Transfer of Functions (Energy) Order 1992, SI 1992/1314, art 3(3), Schedule para 1(e)).

18 Ie the Opencast Coal Act 1958 s 39(4)-(10) (as amended).

19 Ie a direction under *ibid* s 39(1) (as amended); see the text to note 8 *supra*.

20 *Ibid* s 39(3)(a). The orders referred to in the text are those under Pt I (ss 4-16) (as amended). For the meaning of 'opencast planning permission' see PARA 407 note 3 *ante*.

21 Ie any functions under *ibid* Pt I (as amended). For the meaning of 'permitted activities' see PARA 407 note 5 *ante*.

22 *Ibid* s 39(3)(b).

23 *Ibid* s 39(3)(c).

24 Ie in accordance with *ibid* s 15A(5)(c) (as added, substituted and amended) or any of the provisions of Sch 2 (as amended) or Sch 9 (as amended). Any reference in the Opencast Coal Act 1958 s 39 (as amended) to Pt I, or to Sch 2 (as amended), includes a reference to the provisions of any enactment as applied by Pt I, or by Sch 2, as the case may be: see s 39(10) (amended by the Housing and Planning Act 1986 Sch 12 Pt II).

25 Opencast Coal Act 1958 s 39(3)(d) (amended by the Housing and Planning Act 1986 s 39(3), Sch 8 Pt I para 10; and the Coal Industry Act 1994 Sch 8 para 29(3), (4)).

UPDATE

411 Entry on land

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/7. OPENCAST WORKING OF COAL/(1) INTRODUCTION/(ii) Administration and Notices/412. Incidents of power of entry.

412. Incidents of power of entry.

Any power conferred on a person by virtue of the provisions as to entry on land¹ is exercisable by him either alone or with other persons, and is exercisable together with any vehicles, apparatus, materials or animals required for the purpose for which the power is exercised². A person authorised under those provisions to enter upon any land must, if so required, produce evidence of his authority before entering it, or while remaining there, and must not³ demand admission as of right to any land which is occupied unless 42 days' notice of the intended entry has been given to the occupier and to the owner of the land⁴.

Any person who wilfully⁵ obstructs⁶ a person acting in the exercise of any such power of entry is liable on summary conviction to a fine not exceeding level 1 on the standard scale⁷.

Where, in the exercise of any such power of entry any damage is caused to land or chattels, any person interested in the land or chattels is entitled to compensation in respect of that damage from the Coal Authority⁸; and where, in consequence of the exercise of any such power, any person is disturbed in his enjoyment of any land or chattels, he is entitled to compensation from the Authority in respect of that disturbance⁹.

1 Ie by virtue of the Opencast Coal Act 1958 s 39 (as amended): see PARA 411 ante. The power to make directions designating land and conferring power to enter land has not been exercisable since 31 December 1999: see PARA 405 ante.

2 See *ibid* s 39(9).

3 Ie subject to *ibid* s 39(6)-(10) (as amended).

4 See *ibid* s 39(5). However, this provision, in so far as it relates to the giving of notice, does not apply where entry is required only for the purpose of affixing on land any notice in accordance with s 15A(5)(c) (as added, substituted and amended) or any of the provisions of Sch 2 (as amended) or Sch 9 (as amended): see s 39(5) proviso (amended by the Housing and Planning Act 1986 s 39(3), Sch 8 Pt I para 11; and the Coal Industry Act 1994 s 52(2), Sch 8 para 29(4)).

'Owner', in relation to land, subject to the Opencast Coal Act 1958 s 51(2), means the estate owner in respect of the fee simple thereof: s 51(1) (definition amended by virtue of the Coal Industry Act 1994 Sch 8 paras 1, 36(2)). In relation to any land which is subject to a long tenancy, 'owner' means the person entitled to that tenancy, so however that for the purposes of the Opencast Coal Act 1958 s 51(2) a long tenancy, which is in reversion expectant (whether immediately or not) upon the termination of another long tenancy, is to be disregarded: s 51(2). For this purpose, 'long tenancy' means a tenancy granted for a term of years certain, being a term of ninety-nine years or more, whether subsequently extended (by act of the parties or by virtue of any enactment) or not: s 51(2).

5 As to the meaning of 'wilfully' generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 8.

6 As to the meaning of 'obstructs' in various contexts see eg *Hinchliffe v Sheldon* [1955] 3 All ER 406, [1955] 1 WLR 1207, DC; *Evans v Lloyd* [1962] 2 QB 471, [1962] 1 All ER 239, DC; *Rice v Connolly* [1966] 2 QB 414, [1966] 2 All ER 649, DC; *Dibble v Ingleton* [1972] 1 QB 480, [1972] 1 All ER 275, DC; *Willmott v Atack* [1977] QB 498, [1976] 3 All ER 794, DC; and CRIMINAL LAW, EVIDENCE AND PROCEDURE.

7 See the Opencast Coal Act 1958 s 39(8) (amended by the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 98 note 12 ante.

8 As to the Coal Authority see PARA 52 et seq ante.

9 Opencast Coal Act 1958 s 39(7) (amended by the Coal Industry Act 1987 s 1(2), Sch 1 para 7(c); and the Coal Industry Act 1994 Sch 8 paras 1, 29(3)). The persons who may be authorised by the Coal Authority to exercise the powers conferred by the Opencast Coal Act 1958 s 39 (as amended) must include any person who proposes to exercise those powers for the purposes and on behalf of any person who is or has applied to become a licensed operator within the meaning of the Coal Industry Act 1994; but where (1) any person does exercise powers under the Opencast Coal Act 1958 s 39 (as amended) for the purposes of such a person; and (2) his written authority specifies that person and states that he is authorised to exercise those powers for the purposes and on behalf of that person, s 39(7) (as amended) has effect as if the references to the Coal Authority were references to the specified person: see s 39(7A) (added by the Coal Industry Act 1994 Sch 8 paras 1, 29(5)). For the meaning of 'licensed operator' see PARA 60 note 12 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/7. OPENCAST WORKING OF COAL/(1) INTRODUCTION/(ii) Administration and Notices/413. Notices.

413. Notices.

Subject to certain provisions¹, any notice or other document required or authorised to be served or given under the Opencast Coal Act 1958, or under any enactment applied by or incorporated with that Act, may be served or given either: (1) by delivering it to the person on whom it is to be served, or to whom it is to be given²; or (2) by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address³; or (3) by sending it in a prepaid registered letter or by the recorded delivery service, addressed to that person at his usual or last known place of abode, or, in a case in which an address for service has been given by him, at that address⁴; or (4) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office, or sending it in a prepaid registered letter or by the recorded delivery service, addressed to that officer at that office⁵.

Where the notice or document is required or authorised to be served on any person as having an interest in land, and the name of that person cannot be ascertained after reasonable inquiry, or where the notice or document is required or authorised to be served on any person as an occupier of land, the notice must be deemed to be duly served if: (a) being addressed to him either by name or by the description of 'the owner' or 'the occupier' as the case may be, of the land (describing it), it is delivered or sent in the manner prescribed⁶; or (b) being so addressed, it is sent in a prepaid registered letter or by the recorded delivery service to the land in question and is not returned to the person by whom or on whose behalf it is sent, or is delivered to some person on that land or is affixed conspicuously to some object on that land⁷.

Where the notice or other document is required to be served on or given to all persons having interests, or interests of a specified description, in any land, or being occupiers of any land, and it appears to the person required or authorised to serve or give the notice or other document that any part of that land is unoccupied, the notice or other document is deemed to be duly served on all persons having interests, or the relevant interests, as the case may be, in that part of the land and on any occupiers of that part of the land (other than a person who has given an address for the service of the notice on him) if it is addressed to 'the owners and any occupiers' of that part of the land (describing it) and is affixed conspicuously to some object on the land⁸.

¹ ie subject to the provisions of the Opencast Coal Act 1958 s 47, Sch 9 (as amended); see the text to notes 2-5 infra. The provisions of Sch 9 (as amended) have effect as to the service of notices under the Act: s 47(1).

² Ibid Sch 9 para 1(a).

³ Ibid Sch 9 para 1(b).

⁴ Ibid Sch 9 para 1(c); Recorded Delivery Service Act 1962 s 1(2), Schedule para 1.

⁵ Opencast Coal Act 1958 Sch 9 para 1(d); Recorded Delivery Service Act 1962 Schedule para 1. As to proof of delivery see generally CIVIL PROCEDURE vol 11 (2009) PARA 946.

⁶ ie prescribed by the Opencast Coal Act 1958 Sch 9 para 1: see Sch 9 para 2(a).

⁷ Ibid Sch 9 para 2(b); Recorded Delivery Service Act 1962 Schedule para 1.

⁸ Opencast Coal Act 1958 Sch 9 para 3(1). However, this provision does not apply to any notice required to be served or given under the provisions of the Acquisition of Land Act 1981 as applied, in relation to compulsory

rights orders, by the Opencast Coal Act 1958 s 4 (as amended) (see PARA 433 post): see Sch 9 para 3(2) (amended by the Acquisition of Land Act 1981 s 34, Sch 4 para 11(6); and the Housing and Planning Act 1986 s 39(4), Sch 12 Pt II).

The Opencast Coal Act 1958 Sch 9 paras 1-3 (as amended) do not apply to any notice for which a method of service is prescribed by regulations under the Act, except in so far as any of those provisions are applied by those regulations: see Sch 9 para 4.

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(2) OPENCAST PLANNING PERMISSION AND ANCILLARY RIGHTS

(i) Powers and Prohibitions

414. Planning permission.

Opencast working is subject to general planning procedures, which are set out elsewhere in this work¹.

¹ For permitted coal mining development see the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3 (as amended), Sch 2 Pts 19-23; and TOWN AND COUNTRY PLANNING. For the meaning of 'opencast planning permission' see PARA 407 note 3 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/7. OPENCAST WORKING OF COAL/(2) OPENCAST PLANNING PERMISSION AND ANCILLARY RIGHTS/(i) Powers and Prohibitions/415. Suspension of public rights of way.

415. Suspension of public rights of way.

The Opencast Coal Act 1958 provides that where any person applies for opencast planning permission¹, and over any part of the land² to which the application relates there subsists a public right of way³, not being a right enjoyed by vehicular traffic⁴, that person may also apply to the Coal Authority⁵ for an order suspending the public right of way⁶. However, the power to make such an order has not been exercisable since 31 December 1999⁷.

The Authority could not make an order unless: (1) opencast planning permission had been applied for or granted; and (2) it was satisfied that the applicant was a licensed operator within the meaning of the Coal Industry Act 1994 or a person whose application to the Authority for a licence⁸ was pending; and had complied with the statutory requirements⁹ before submitting the application; and (3) it was also satisfied that a suitable alternative way would be made available by the applicant, whether on land comprised in the opencast planning permission or on other land, for use by the public during the period for which the order remained in force; or that the provision of such an alternative way was not required¹⁰.

An order¹¹ could be made either in accordance with the application or subject to such modifications as the Authority might determine¹².

1 For the meaning of 'opencast planning permission' see PARA 407 note 3 ante.

2 As to the meaning of 'land' see PARA 405 note 4 ante.

3 As to statutory provisions as to the stopping up or diversion of highways see generally HIGHWAYS, STREETS AND BRIDGES.

4 See, however, the definitions of 'bridleway' and 'footway' in the Highways Act 1980 s 329(1): see HIGHWAYS, STREETS AND BRIDGES.

5 Applications were previously made to the Secretary of State: see the Opencast Coal Act 1958 s 15 (as originally enacted). An application to the Secretary of State for an order under s 15 (as originally enacted) which was pending immediately before the restructuring date has effect on and after that date as if made to the Coal Authority and does not require the confirmation of the Secretary of State: Coal Industry Act 1994 s 67(7), Sch 10 para 9(3), (4). As to the Secretary of State see PARA 4 ante. As to the Coal Authority see PARA 52 et seq ante.

6 Opencast Coal Act 1958 s 15(1) (s 15 substituted and s 15A added by the Housing and Planning Act 1986 s 39(3), Sch 8 Pt I para 6; and the Opencast Coal Act 1958 s 15(1) amended by the Coal Industry Act 1987 s 1(2), Sch 1 para 7(c); and the Coal Industry Act 1994 s 52(2), Sch 8 paras 1, 12(1), (2)). As to the position where the original applicant is succeeded by a successor see the Opencast Coal Act 1958 s 15(3A), (3B) (s 15(3A), (3B) both added by the Coal Industry Act 1994 Sch 8 paras 1, 12(3)). 'Successor', in relation to an applicant for an order under any provision of the Opencast Coal Act 1958, means any person, whether or not the immediate successor of the applicant, who: (1) in accordance with the provisions of any licence granted to the applicant under the Coal Industry Act 1994 Pt II (ss 25-36) (as amended), succeeds to any entitlement of that applicant under that licence to work any coal by opencast operations; or (2) becomes entitled by virtue of the grant of a new licence under Pt II (as amended) to work by such operations any coal which the applicant was previously entitled so to work as a licensed operator within the meaning of that Act: Opencast Coal Act 1958 s 51(1) (definition added by the Coal Industry Act 1994 Sch 8 paras 1, 36(1)(b)).

7 See the Coal Industry Act 1994 s 52(1); and PARA 405 ante.

8 I.e. under ibid Pt II (as amended): see the Opencast Coal Act 1958 s 15(2) (as substituted and amended: see note 10 infra). For the meaning of 'licensed operator' see PARA 60 note 12 ante.

9 le the requirement that notice should be given before submission of an application for an order under *ibid* s 15 (as substituted and amended), identifying the right of way and stating: (1) that it was proposed to apply for a suspension order in connection with the working of coal by opencast operations; (2) whether the applicant proposed to make available any alternative way and, if so, what the alternative was; and (3) that opencast planning permission had been applied for, or, as the case may be, had been granted: see s 15A(1) (as added (see note 6 *supra*); and amended by the Coal Industry Act 1987 Sch 1 para 7(c); and the Coal Industry Act 1994 s 67(7), (8), Sch 8 paras 1, 13(1), Sch 11 Pt II). As to the working of coal by opencast operations see *PARA* 407 note 5 *ante*. For the meaning of 'coal' see *PARA* 405 note 5 *ante*. As to the prescribed forms for the purposes of these provisions see the Opencast Coal (Compulsory Rights, Drainage and Rights of Way) (Forms) Regulations 1994, SI 1994/3097, reg 4, Forms 6-8.

An order under the Opencast Coal Act 1958 s 15 (as substituted and amended) could not be made except where conditions for the making of the order were imposed or other provision was included in the order for securing the reconstruction of the way on the restoration of the land over which the right of way subsisted immediately before the order was made: s 15(5) (as substituted (see note 6 *supra*); and amended by the Coal Industry Act 1994 Sch 8 paras 1, 12(5)). See also *PARA* 418 note 10 *post*. 'Restoration', in relation to land, includes rehabilitation; and 'restore' is to be construed accordingly: Opencast Coal Act 1958 s 51(1).

10 See *ibid* s 15(2) (as substituted (see note 6 *supra*); and amended by the Coal Industry Act 1987 Sch 1 para 7(c); and the Coal Industry Act 1994 Sch 8 paras 1, 12(1), (2)). In connection with the provision of such a suitable alternative way as is referred to in the Opencast Coal Act 1958 s 15(2) (as substituted and amended), see further s 15(6) (as so substituted; and amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 5(b)).

11 le an order under the Opencast Coal Act 1958 s 15 (as substituted and amended): see s 15A(9) (as added and amended: see note 12 *infra*).

12 See *ibid* s 15A(9) (as added (see note 6 *supra*); and amended by the Coal Industry Act 1994 Sch 8 para 13(10), Sch 11 Pt II). This did not prejudice the Secretary of State's power to make further modifications when confirming the order: see s 15A(9) (as so added and amended); and *PARA* 417 *post*.

UPDATE

415 Suspension of public rights of way

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see *LOCAL GOVERNMENT* vol 69 (2009) *PARA* 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see *ADMINISTRATIVE LAW* vol 1(1) (2001 Reissue) *PARA* 196A.

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416. Procedure on application.

As soon as reasonably practicable after making an order¹ the Coal Authority² had to submit it to the Secretary of State³ for confirmation and publish a notice in the prescribed form identifying the right of way in question and stating:

- 185 (1) that the Authority had made an order that would suspend the right of way in connection with the working of coal by opencast operations⁴ and had submitted the order for confirmation to the Secretary of State⁵;
- 186 (2) whether the applicant for the order was to make any alternative way available and, if so, what the alternative was⁶;
- 187 (3) that opencast planning permission⁷ had been applied for or, as the case may be, granted⁸; and
- 188 (4) that objections to the confirmation of the order could be made in writing to the Secretary of State within a specified time⁹.

Detailed provision was made as to the manner of publication, and the giving of information¹⁰.

The Secretary of State could not confirm an order unless he was satisfied that: (a) the required notice had been published and the prescribed requirements had been satisfied; (b) the period for the making of objections had expired; and (c) the opencast planning permission had been granted¹¹. The Secretary of State could cause a public local inquiry to be held before determining whether to confirm an order¹², and he had to consider all objections to the application and the report of the person who held the inquiry before determining whether to confirm the order¹³.

1 I.e. an order under the Opencast Coal Act 1958 s 15 (as substituted and amended): see s 15A(1A) (as added: see note 5 *infra*).

2 As to the Coal Authority see PARA 52 *et seq ante*.

3 As to the Secretary of State see PARA 4 *ante*.

4 As to the working of coal by opencast operations see PARA 407 note 5 *ante*. For the meaning of 'coal' see PARA 405 note 5 *ante*.

5 Opencast Coal Act 1958 s 15A(1A)(a) (s 15A added by the Housing and Planning Act 1986 s 39(3), Sch 8 Pt I para 6; and the Opencast Coal Act 1958 s 15A(1A) added by the Coal Industry Act 1994 s 52(2), Sch 8 para 13(2), (4)).

6 Opencast Coal Act 1958 s 15A(1A)(b) (as added: see note 5 *supra*).

7 For the meaning of 'opencast planning permission' see PARA 407 note 3 *ante*.

8 Opencast Coal Act 1958 s 15A(1A)(c) (as added: see note 5 *supra*).

9 Ibid s 15A(1A)(d) (as added: see note 5 *supra*). As to the period for the making of objections see s 15A(3) (as so added).

10 See *ibid* s 15A(2), (4) (s 15A as added (see note 5 *supra*); and s 15A(2), (4) amended by the Coal Industry Act 1994 Sch 8 para 13(3), (5)). See also the Opencast Coal Act 1958 s 15A(5) (s 15A as so added; and s 15A(5) amended by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 14, Sch 18; and the Coal Industry Act 1994 Sch 8 para 13(6), (11)).

11 See the Opencast Coal Act 1958 s 15A(2A) (s 15A as added (see note 5 supra); s 15A(2A) added by the Coal Industry Act 1994 Sch 8 para 13(2), (4)). A confirmed order did not have effect until notice of it had been given by the person on whose application the order was made: see the Opencast Coal Act 1958 s 15A(10), (11) (s 15A as so added; s 15A(10) amended by the Coal Industry Act 1994 Sch 8 para 13(6), (11); and the Opencast Coal Act 1958 s 15A(11) amended by the Coal Industry Act 1994 Sch 8 para 13(9), (12)).

12 See the Opencast Coal Act 1958 s 15A(7) (as added (see note 5 supra); amended by the Coal Industry Act 1994 Sch 8 para 13(8)).

13 Opencast Coal Act 1958 s 15A(8) (as added (see note 5 supra); amended by the Coal Industry Act 1994 Sch 8 para 13(9), (12)).

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417. Effect of order suspending rights of way.

An order¹ does not have effect unless confirmed by the Secretary of State²; and where it has been confirmed, has effect (with such modifications as the Secretary of State may have determined in confirming it) so as to suspend the right of way to which it relates with effect³ from such date as may be determined by the Secretary of State and specified in the order as confirmed⁴.

Where, in pursuance of an order⁵, a public right of way is suspended, and, immediately before the date on which that order became operative, there was under, in, upon, over, along or across the way to which the order relates a telecommunication apparatus⁶ kept installed for the purposes of a telecommunications code system⁷, the operator of that system has the same rights in respect of that apparatus as if the order had not become operative⁸.

1 Ie an order under the Opencast Coal Act 1958 s 15 (as substituted and amended): see s 15(3) (as substituted: see note 4 infra).

2 As to the Secretary of State see PARA 4 ante.

3 Ie subject to the Opencast Coal Act 1958 s 15A(10), (11) (as added and amended): s 15(3) (as substituted: see note 4 infra).

4 See *ibid* s 15(3) (s 15 substituted by the Housing and Planning Act 1986 s 39(3), Sch 8 Pt I para 6; and the Opencast Coal Act 1958 s 15(3) (further substituted by the Coal Industry Act 1994 s 52(2), Sch 8 paras 1, 12(3)).

5 Ie an order under the Opencast Coal Act 1958 s 15 (as substituted and amended): see s 45(3) (as amended: see note 8 infra).

6 For the meaning of 'telecommunication apparatus' see the Telecommunications Act 1984 s 109, Sch 4 para 1; and TELECOMMUNICATIONS vol 97 (2010) PARAS 59, 163, 174.

7 For the meaning of 'telecommunications code system' see *ibid* Sch 4 para 1; and TELECOMMUNICATIONS vol 97 (2010) PARAS 60, 174.

8 Opencast Coal Act 1958 s 45(3) (amended by the Coal Industry Act 1975 s 7(4), Sch 5; and the Telecommunications Act 1984 Sch 4 para 38(4), Sch 5 para 45). However, the Opencast Coal Act 1958 s 45(3) (as amended) has effect without prejudice to the provisions of s 45(2) (as amended): see s 45(3) proviso.

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418. Revocation of order suspending certain public rights of way.

Where an order suspending public rights of way has been made¹ the Secretary of State² must revoke it: (1) if no permitted activities³ have been carried on pursuant to the opencast planning permission⁴ on the land⁵ over which the right of way subsisted, and he is satisfied that there is no early prospect of such activities being so carried on⁶; or (2) as soon after such permitted activities have been so carried on as he is satisfied that it is no longer necessary for the fulfilment for the purpose of carrying on such permitted activities that the right of way should be suspended⁷; or (3) he is satisfied that it is appropriate to do so on account of any failure on the part of the person on whose application the order was made to comply with any of the prescribed requirements⁸. Provision is made for the reconstruction of the way on the restoration⁹ of the land over which the right of way subsisted immediately before the order was made¹⁰.

1 Ie an order under the Opencast Coal Act 1958 s 15 (as substituted and amended). The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

2 As to the Secretary of State see PARA 4 ante.

3 For the meaning of 'permitted activities' see PARA 407 note 5 ante.

4 For the meaning of 'opencast planning permission' see PARA 407 note 3 ante.

5 As to the meaning of 'land' see PARA 405 note 4 ante.

6 See the Opencast Coal Act 1958 s 15(4)(a) (s 15 substituted by the Housing and Planning Act 1986 s 39(3), Sch 8 Pt I para 6).

7 See the Opencast Coal Act 1958 s 15(4)(b) (as substituted: see note 6 supra).

8 Ie any of the requirements of ibid s 15A(10) (as added and amended): see s 15(4)(c) (as substituted (see note 6 supra); and amended by the Coal Industry Act 1994 s 52(2), Sch 8 paras 1, 12(4)).

9 As to the meaning of 'restoration' see PARA 415 note 9 ante.

10 See the Opencast Coal Act 1958 s 15(5) (as substituted (see note 6 supra); and amended by the Coal Industry Act 1994 Sch 8 paras 1, 12(5)). See also PARA 415 note 9 ante.

For the purposes of the Opencast Coal Act 1958 s 15(5) (as substituted and amended), a local planning authority may enter into an agreement with any applicant for an order under s 15 (as substituted and amended) as to the steps to be taken by that person or any of his successors for securing the reconstruction of the way in question; and such an agreement has effect, so far as it relates to steps to be taken by any successor of the applicant, as if that successor had been a party to it and was bound by it to the same extent as the applicant: s 15(5A) (s 15 as substituted (see note 6 supra); s 15(5A) added by the Coal Industry Act 1994 Sch 8 paras 1, 12(6)).

'Local planning authority' and 'local authority' have the meanings assigned by the Town and Country Planning Act 1990 s 336(1) (as amended) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 2): Opencast Coal Act 1958 s 51(1) (definition amended by virtue of the Planning (Consequential Provisions) Act 1990 Sch 3 para 3). For the meaning of 'successor' see PARA 415 note 6 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/7. OPENCAST WORKING OF COAL/(2) OPENCAST PLANNING PERMISSION AND ANCILLARY RIGHTS/(ii) Particular Effects of Grants of Opencast Planning Permission/419. Provisions as to agricultural tenancies in England and Wales.

(ii) Particular Effects of Grants of Opencast Planning Permission

419. Provisions as to agricultural tenancies in England and Wales.

Where opencast planning permission¹ has been granted subject to a restoration² condition and to an aftercare condition in which the use specified is use for agriculture³ or use for forestry, and immediately before that permission is granted, any of the land⁴ comprised therein consists of an agricultural holding held under a tenancy in relation to which the Agricultural Holdings Act 1986 applies or part of such an agricultural holding, whether any of that land is comprised in a compulsory rights order⁵ or not, special provisions apply for the purposes of that Act⁶.

The tenant of the holding is not to be taken to have failed to fulfil his responsibilities to farm in accordance with the rules of good husbandry⁷: (1) by reason of his having permitted any of the land comprised in the opencast planning permission to be occupied for the purpose of carrying on any of the permitted activities⁸, or by reason of any other thing done or omitted by him for facilitating the use of any of that land for that purpose⁹; (2) where any of that land is comprised in a compulsory rights order, by reason of the occupation or use of any of that land in the exercise of rights conferred by the order, in so far as that occupation or use was not permitted or facilitated by the tenant as mentioned in head (1) above¹⁰.

Nothing done or omitted by the tenant or by the landlord of the holding by way of permitting any of the land in respect of which opencast planning permission has been granted to be occupied for the purpose of carrying on any of the permitted activities, or by way of facilitating the use of any of that land for that purpose, is to be taken to be a breach of any term or condition of the tenancy, either on the part of the tenant or on the part of the landlord¹¹.

On a reference to arbitration under the Agricultural Holdings Act 1986¹² with respect to the rent which should be properly payable for the holding, in respect of any period for which the person with the benefit of the opencast planning permission is in occupation of the holding, or of any part thereof, for the purpose of carrying on any of the permitted activities, the arbitrator must not take into account any increase or diminution in the rental value of the holding in so far as that increase or diminution is attributable to the occupation of the holding, or of that part of the holding, by that person for the purpose of carrying on any of the permitted activities¹³.

1 For the meaning of 'opencast planning permission' see PARA 407 note 3 ante.

2 As to the meaning of 'restoration' see PARA 415 note 9 ante.

3 For these purposes, 'agriculture' has the same meaning as in the Agriculture Act 1947 s 109(3) (see AGRICULTURAL LAND vol 1 (2008) PARA 324), and 'agricultural' (except in the expressions 'agricultural holding' and 'agricultural land') is construed accordingly: Opencast Coal Act 1958 s 51(1). 'Agricultural holding' has the meaning assigned to it by the Agricultural Holdings Act 1986 s 1(1) (see AGRICULTURAL LAND vol 1 (2008) PARA 323); Opencast Coal Act 1958 s 51(1) (definition amended by the Agricultural Holdings Act 1986 s 100, Sch 14 para 31(b)).

4 As to the meaning of 'land' see PARA 405 note 4 ante.

5 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq post. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

6 See *ibid* s 14(1) (s 14 substituted by the Housing and Planning Act 1986 s 39(3), Sch 8 Pt I para 5; Opencast Coal Act 1958 s 14(1) amended by the Agricultural Tenancies Act 1995 s 40, Schedule para 13(2), (3)). The Opencast Coal Act 1958 s 14(1) (as substituted and amended) is without prejudice to the provisions of Pt III (ss 37-53) (as amended) as to matters arising between landlords and tenants in consequence of compulsory rights orders: see s 14(1) (as so substituted). For the purposes of the Agricultural Holdings Act 1986 the holding is not to be taken to have ceased to be an agricultural holding; and where only part of the holding is comprised in opencast planning permission, that part is not to be taken to have ceased to form part of an agricultural holding, by reason only that, while occupied or used for the permitted activities, the land is not being used for agriculture within the meaning of that Act: see the Opencast Coal Act 1958 s 14(2) (as so substituted; amended by the Agricultural Tenancies Act 1995 Schedule para 13(2), (3)).

7 As to such rules see the Agriculture Act 1947 s 11 (applied by the Agricultural Holdings Act 1986 s 96(3)); and AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 903.

8 For the meaning of 'permitted activities' see PARA 407 note 5 ante.

9 Opencast Coal Act 1958 s 14(3)(a) (as substituted: see note 6 supra).

10 *Ibid* s 14(3)(b) (as substituted: see note 6 supra).

11 *Ibid* s 14(4) (as substituted: see note 6 supra). For the purposes of the Agricultural Holdings Act 1986 s 27(1)-(3) (Agricultural Land Tribunal's consent to operation of notice to quit) the condition specified in s 27(3)(f) is not treated as satisfied if the use for the purpose for which the landlord proposes to terminate the tenancy is the use of the land for carrying on any of the permitted activities: see the Opencast Coal Act 1958 s 14(5) (as so substituted).

12 *Ie* the Agricultural Holdings Act 1986 s 12: see the Opencast Coal Act 1958 s 14(6) (as substituted and amended: see note 13 *infra*).

13 See *ibid* s 14(6) (as substituted (see note 6 supra); amended by the Coal Industry Act 1994 s 52(2), Sch 8 para 10). For the purpose of the operation of the Agricultural Holdings Act 1986 s 13 (increases of rent for landlord's improvements) in relation to improvements carried out on the holding, in a case where the improvements have been affected by anything done for the purpose of carrying on any of the permitted activities, the increase (if any) of the rental value of the holding attributable to the carrying out of the improvements is assessed as if it had not been done: Opencast Coal Act 1958 s 14(7) (as so substituted). Section 14 (as substituted and amended) does not extend to Scotland: s 14(8) (as so substituted).

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420. Provisions as to farm business tenancies.

Without prejudice to the provisions of the Opencast Coal Act 1958¹ as to matters arising between landlords and tenants in consequence of compulsory rights orders², where opencast planning permission³ has been granted subject to a restoration⁴ condition and, immediately before that permission is granted, any of the land⁵ comprised therein consists of the holding⁶ or part of the holding held under a farm business tenancy⁷, whether any of that land is comprised in a compulsory rights order or not, special provisions apply for the purposes of the Agricultural Tenancies Act 1995⁸.

For the purposes of the Agricultural Tenancies Act 1995⁹, the land is to be taken, while it is occupied or used for the permitted activities¹⁰, to be used for the purposes for which it was used immediately before it was occupied or used for the permitted activities¹¹.

For the purposes of the Agricultural Tenancies Act 1995, nothing done or omitted by the tenant or by the landlord under the tenancy by way of permitting any of the land in respect of which opencast planning permission has been granted to be occupied for the purpose of carrying on any of the permitted activities, or by way of facilitating the use of any of that land for that purpose, is to be taken to be a breach of any term or condition of the tenancy, either on the part of the tenant or on the part of the landlord¹².

1 Ie the Opencast Coal Act 1958 Pt III (ss 37-53) (as amended): see s 14B (as added: see note 8 infra).

2 As to compulsory rights orders see *ibid* s 4 (as amended); and PARA 422 et seq post. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

3 For the meaning of 'opencast planning permission' see PARA 407 note 3 ante.

4 As to the meaning of 'restoration' see PARA 415 note 9 ante.

5 As to the meaning of 'land' see PARA 405 note 4 ante.

6 For the purposes of the Opencast Coal Act 1958 s 14B (as added), 'holding', in relation to a farm business tenancy, has the same meaning as in the Agricultural Tenancies Act 1995 s 38(1) (see AGRICULTURAL LAND vol 1 (2008) PARA 302): Opencast Coal Act 1958 s 14B(5) (as added: see note 8 infra).

7 For these purposes, 'farm business tenancy' has the same meaning as in the Agricultural Tenancies Act 1995 s 1 (see AGRICULTURAL LAND vol 1 (2008) PARA 302): Opencast Coal Act 1958 s 51(1) (definition added by the Agricultural Tenancies Act 1995 s 40, Schedule para 19(b)).

8 See the Opencast Coal Act 1958 s 14B(1) (s 14B added by the Agricultural Tenancies Act 1995 Schedule para 14).

9 Ie the Agricultural Tenancies Act 1995 s 1 (see AGRICULTURAL LAND vol 1 (2008) PARA 302): see the Opencast Coal Act 1958 s 14B(2) (as added: see note 8 supra).

10 For the meaning of 'permitted activities' see PARA 407 note 5 ante.

11 Opencast Coal Act 1958 s 14B(2) (as added: see note 8 supra).

12 *Ibid* s 14B(3) (as added: see note 8 supra). In determining, under the Agricultural Tenancies Act 1995 s 13(1), (2) (see AGRICULTURAL LAND vol 1 (2008) PARA 309), the rent which should be properly payable for the holding, in respect of any period for which the person with the benefit of the opencast planning permission is in occupation of the holding, or of any part thereof, for the purpose of carrying on any of the permitted activities,

the arbitrator is to disregard any increase or diminution in the rental value of the holding in so far as that increase or diminution is attributable to the occupation of the holding, or of that part of the holding, by that person for the purpose of carrying on any of the permitted activities: Opencast Coal Act 1958 s 14B(4) (as so added). Section 14B (as added) does not extend to Scotland: s 14B(6) (as added: see note 8 supra).

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421. Rights as to drainage or water supply.

The Opencast Coal Act 1958 provides that for the purposes of draining land¹, or bringing a supply of water to land, in respect of which opencast planning permission² has been applied for or granted, the Coal Authority³, on an application⁴, may, by means of an order made by it and confirmed by the Secretary of State, confer on the person with the benefit of the permission⁵ a right⁶ to place drainage works⁷, or water pipes, on any other land, whether above or below ground, and to use, repair and maintain those works, or pipes, without purchasing any other interest in that land⁸. However, the power to make such an order has not been exercisable since 31 December 1999⁹.

The Authority could not make such an order except on the application of a person who:

- 189 (1) was the person with the benefit of the opencast planning permission or, where the permission had been applied for but had not been granted, the person who would have the benefit of that permission;
- 190 (2) satisfied the Authority that he was either a licensed operator¹⁰ or a person whose application to the Authority for a licence¹¹ was pending; and
- 191 (3) satisfied the Authority that he had served notice¹² in the prescribed¹³ form of the application for the order on every owner¹⁴, lessee and occupier of the other land (except tenants for a month or any period of less than a month),

and an order made before the opencast planning permission had been granted was not to be confirmed until after it had been granted¹⁵.

The order had to specify the land (being the whole or part of the land in respect of which the planning permission had been applied for or granted) for the benefit of which the right was to be conferred¹⁶.

An order made under these provisions is a local land charge¹⁷.

1 As to the meaning of 'land' see PARA 405 note 4 ante. Except with the consent of the appropriate authority no order is to be made under the Opencast Coal Act 1958 s 16 (as amended) in respect of any land in which for the time being there is a Crown or Duchy interest (for the meaning of which see PARA 406 note 2 ante): s 44(2) (b). However, this does not affect the validity or operation of an order, or the exercise of any power, as against any person having, in or over the land in question, any interest or right other than a Crown or Duchy interest: s 44(2) proviso.

2 For the meaning of 'opencast planning permission' see PARA 407 note 3 ante.

3 Applications were previously made to the Secretary of State: see the Opencast Coal Act 1958 s 16 (as originally enacted). As to the Secretary of State see PARA 4 ante. An application to the Secretary of State for an order under s 16 (as originally enacted) which is pending immediately before the restructuring date (ie 31 October 1994: see PARA 3 note 9 ante) has effect on and after that date as if made to the Coal Authority: Coal Industry Act 1994 s 67(7), Sch 10 para 9(3). This does not affect the operation of the Opencast Coal Act 1958 in relation to any such order made before the restructuring date: Coal Industry Act 1994 Sch 10 para 9(5). As to the Coal Authority see PARA 52 et seq ante.

4 ie on an application in accordance with the Opencast Coal Act 1958 s 16(2A) (as added): see s 16(1), (2) (as amended: see note 8 infra). As to the position where the original applicant is succeeded by a successor see

s 16(4B), (4C) (added by the Coal Industry Act 1994 Sch 8 para 14(2), (6), (9)). For the meaning of 'successor' see PARA 415 note 6 ante.

5 References in relation to any opencast planning permission, to the person with the benefit of that permission are to be construed as a reference to any person who: (1) is able, on account of his having all such interests or rights as (apart from that permission) he requires for the purpose, to carry out any of the permitted activities; or (2) would be so able if the rights which he had and was entitled to exercise included any such right as he has applied for, or is entitled to apply for, under the Opencast Coal Act 1958 or any right which has been conferred on him under the Act but has not yet become exercisable: s 51(1A) (added by the Coal Industry Act 1994 s 52(2), Sch 8 para 36(2)).

6 Any right conferred by an order under the Opencast Coal Act 1958 s 16 (as amended) is exercisable by, or by any person authorised by: (1) a person who: (a) is for the time being in occupation of the land specified in accordance with s 16(3) (as amended) in the order; (b) is the person on whom the right was conferred; and (c) was in occupation of that land when it was conferred; or (2) a person who is for the time being in occupation of the land by virtue of the transfer to him either: (a) by, or with the written approval of, the Coal Authority; or (b) in any other case described in the order, of any interest or right which, at the time when the right was conferred under s 16 (as amended), was vested in a person who became entitled to exercise it by virtue of head (1) supra: s 16(4) (substituted by the Coal Industry Act 1994 Sch 8 para 14(4)). A right conferred by an order under the Opencast Coal Act 1958 s 16 (as amended) (whether or not conferred while the person on whom it was conferred was in occupation of the land) is, in the case of land in England and Wales, treated as an easement appurtenant in perpetuity to that land: see s 16(4) (as so substituted).

For the purposes of any such order conferring rights exercisable on any land in England and Wales: (i) the Acquisition of Land Act 1981 Pts II-IV (ss 10-27) (as amended) apply as they would apply in relation to a compulsory rights order in which that land is comprised, and s 29 (as amended) applies accordingly but with the omission of s 29(4), (5); and (ii) the Compulsory Purchase Act 1965 has effect as if the conferring of those rights were the compulsory acquisition of those rights by the person on whom they are conferred; and references (whatever the terms used) to the land comprised in the compulsory purchase order were construed, where the context so requires, as references to the land on which the works or pipes are to be placed, and references to the obtaining or taking possession of the first mentioned land were construed as references to the exercise of the right: see the Opencast Coal Act 1958 s 16(4A) (added by the Acquisition of Land Act 1981 s 34, Sch 4 para 11(4); and amended by the Coal Industry Act 1994 Sch 8 para 14(5)).

7 For the purposes of the Opencast Coal Act 1958 s 16 (as amended), 'drainage works' includes any pipes or other works for draining land and any works accessory to such works; and (1) any right to maintain drainage works or water pipes in pursuance of an order made by virtue of s 16 (as amended) includes the right to remove those works or pipes, whether for the purpose of replacing them by other drainage works or water pipes or otherwise; and (2) any right to maintain drainage works on any land in pursuance of such an order, if the order so provides, includes a right to discharge water from those works on to that land: s 16(7).

8 See *ibid* s 16(1), (2) (amended by the Housing and Planning Act 1986 s 39(3), Sch 8 Pt I para 7; and the Coal Industry Act 1994 Sch 8 para 14(1)). Nothing in the Opencast Coal Act 1958 s 16 (as amended) is to be construed as authorising any interference with the exercise of a public right of way, or any contravention of a prohibition or restriction imposed by or under any enactment (whether contained in a public general Act or in any other Act): see s 16(8).

9 See the Coal Industry Act 1994 s 52(1); and PARA 405 ante.

10 *Ie* within the meaning of the Coal Industry Act 1994: see the Opencast Coal Act 1958 s 16(2A) (as added: see note 15 *infra*).

11 *Ie* a licence under the Coal Industry Act 1994 Pt II (ss 25-36) (as amended) (see PARA 91 *et seq* ante): see the Opencast Coal Act 1958 s 16(2A) (as added: see note 15 *infra*).

12 The Acquisition of Land Act 1981 s 12(2), (3) (as amended) (statutory tenants etc and ecclesiastical property) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 560) has effect in relation to the service of a notice under the Opencast Coal Act 1958 s 16 (as amended) as respects any land in England and Wales as they have effect in relation to the service of a notice under the Acquisition of Land Act 1981 s 12 (as amended): see the Opencast Coal Act 1958 s 16(7A) (added by the Coal Industry Act 1994 Sch 8 para 14(2), (6), (9)).

13 'Prescribed' means prescribed by regulations made under the Opencast Coal Act 1958: s 51(1).

14 For the meaning of 'owner' see PARA 412 note 4 ante.

15 See the Opencast Coal Act 1958 s 16(2A) (added by the Coal Industry Act 1994 Sch 8 para 14(2), (6), (9)).

16 See the Opencast Coal Act 1958 s 16(3) (amended by the Coal Industry Act 1994 Sch 8 para 14(3); and the Housing and Planning Act 1986 Sch 8 Pt I para 7).

17 The provisions of the Opencast Coal Act 1958 s 11 (as amended) apply in relation to an order made and confirmed under s 16 (as amended) as they apply in relation to a compulsory rights order: see s 16(6) (amended by the Coal Industry Act 1994 Sch 8 para 14(8)). See further PARA 422 text and note 24 post. As to land charges generally see LAND CHARGES.

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(3) ACQUISITION OF TEMPORARY RIGHTS OF USE AND OCCUPATION

(i) Compulsory Rights Orders

422. Nature of compulsory rights order.

The Opencast Coal Act 1958 provides that for the purpose of facilitating the working of coal by opencast operations¹, the Coal Authority² has power, by means of a compulsory rights order³ made by the Authority and confirmed by the Secretary of State⁴, to confer⁵ temporary⁶ rights of occupation and use of the whole, or such part as, subject to the confirmation of the Secretary of State, the Authority thinks fit, of any land⁷ on which the applicant for the order desires to work coal by such operations or to carry out operations incidental to such working⁸. However, the power to make such an order has not been exercisable since 31 December 1999⁹.

The Authority could not make a compulsory rights order except on the application of a person who satisfied the Authority that: (1) he was either a licensed operator¹⁰ or a person whose application to that Authority for a licence¹¹ was pending¹²; and (2) he had served notice in the prescribed¹³ form of the application for the order on every person known to him to be a person who would, in relation to the order applied for, be directly concerned¹⁴.

Subject to certain provisions¹⁵, the rights conferred by an order made on such an application¹⁶ were conferred on the applicant and his successors¹⁷ so as to be exercisable for the purposes only of: (a) operations which the applicant or, as the case may be, any such successor is authorised to carry out by virtue of being a licensed operator¹⁸; and (b) operations which are incidental to operations falling within head (a) above, including operations carried out at times when the authorisation for the operations falling within head (a) is not in force¹⁹.

Certain classes of rights are not affected by a compulsory rights order²⁰, and such an order may be expressed to extend to certain classes of right only²¹. Further, certain types of property are exempt from inclusion in a compulsory rights order²².

A compulsory rights an order is subject to certain requirements in relation to opencast planning permission²³.

Compulsory rights orders are local land charges²⁴, and records must be made relating to the land comprised in those orders²⁵.

1 For the meaning of 'coal' see PARA 405 note 5 ante. As to references to working coal by opencast operations see PARA 407 note 5 ante.

2 As to the Coal Authority see PARA 52 et seq ante.

3 As to the prescribed form in connection with a compulsory rights order see the Opencast Coal (Compulsory Rights, Drainage and Rights of Way) (Forms) Regulations 1994, SI 1994/3097, reg 3, Form 2.

4 As to the Secretary of State see PARA 4 ante.

5 Ie confer in accordance with the provisions of the Opencast Coal Act 1958 Pt I (ss 4-16) (as amended): see s 4(1) (as substituted and amended: see note 9 infra).

6 As to the duration of compulsory rights orders see PARA 423 post.

7 As to the meaning of 'land' see PARA 405 note 4 ante. Except with the consent of the appropriate authority, no compulsory rights order could be made in respect of any land in which for the time being there is a Crown or Duchy interest (for the meaning of which see PARA 406 note 2 ante): Opencast Coal Act 1958 s 44(2)(a). However, this does not affect the validity or operation of an order, or the exercise of any power, as against any person having, in or over the land in question, any interest or right other than a Crown or Duchy interest: s 44(2) proviso. Where a compulsory rights order has been made, with the consent of the appropriate authority, in respect of land in which there is a Crown or Duchy interest, that interest, in so far as the order confers rights exercisable as against all persons directly concerned, is treated as not being the interest of a person directly concerned, and no compensation is payable under Pt II (ss 17-36) (as amended) in respect of that interest: s 44(3) (amended by the Coal Industry Act 1994 ss 52(2), 67(8), Sch 8 para 33, Sch 11 Pt II).

Notwithstanding anything in the Opencast Coal Act 1958 Pt I (as amended), none of the rights or powers conferred by Pt I (as amended) or by any order made under Pt I (as amended) authorises any interference with any telecommunication apparatus kept installed for the purposes of a telecommunications code system or includes any right or power to require any such apparatus to be altered: see s 45(1) (amended by the Telecommunications Act 1984 Sch 4 para 38). For the meaning of 'telecommunication apparatus', 'telecommunications code system', and 'telecommunication code' see the Telecommunications Act 1984 s 109, Sch 4 para 1; and TELECOMMUNICATIONS vol 97 (2010) PARAS 59, 151, 163, 174.

The telecommunications code Sch 2 para 1(2) (alteration of apparatus to include moving, removal or replacement of apparatus) applies for the purposes of the Opencast Coal Act 1958 s 45(1) (as amended) as it applies for the purposes of that code: s 45(4) (substituted by the Telecommunications Act 1984 Sch 4 para 38, Sch 5 para 45).

8 Opencast Coal Act 1958 s 4(1) (substituted by the Coal Industry Act 1975 s 4; amended by the Housing and Planning Act 1986 s 39(3), Sch 8 Pt I para 2; and the Coal Industry Act 1994 Sch 8 para 2(1)); Opencast Coal Act 1958 s 51(1). Cf the provisions of the Mines (Working Facilities and Support) Act 1966 s 3(2); and PARA 394 ante.

Where any compulsory rights order was made under the Opencast Coal Act 1958 before the restructuring date (ie 31 October 1994: see PARA 3 note 9 ante) and was awaiting confirmation on that date, that order could be confirmed on or after that date in accordance with that Act as if it had been made by the Authority on the application of the British Coal Corporation: Coal Industry Act 1994 Sch 10 para 9(1). The rights conferred on the Corporation by any compulsory rights order made under the Opencast Coal Act 1958 before the restructuring date have effect on and after that date as if conferred on the Corporation and its successors (within the meaning of that Act) so as to be exercisable for the purposes only of: (1) operations which the Corporation or, as the case may be, any such successor is authorised to carry out by virtue of being a licensed operator; and (2) operations which are incidental to operations falling within head (1) *supra* (including operations carried out at times when the authorisation for the operations falling within head (1) *supra* is not in force): Coal Industry Act 1994 Sch 10 para 9(2). As to the British Coal Corporation see PARAS 2-3 ante.

9 See the Coal Industry Act 1994 s 52(1); and PARA 405 ante.

10 For the meaning of 'licensed operator' see PARA 60 note 12 (definition applied by the Opencast Coal Act 1958 s 4(1A) (as added: see note 12 *infra*)).

11 Ie a licence under the Coal Industry Act 1994 Pt II (ss 25-36) (as amended): see the Opencast Coal Act 1958 s 4(1A) (as added: see note 12 *infra*).

12 See *ibid* s 4(1A)(a) (s 4(1A) added by the Coal Industry Act 1994 Sch 8 para 2(2)).

13 For the meaning of 'prescribed' see PARA 421 note 13 ante.

14 See the Opencast Coal Act 1958 s 4(1A)(b) (as added: see note 12 *supra*). In the Opencast Coal Act 1958, subject to the provisions of ss 7-53 (as amended), 'persons directly concerned', in relation to a compulsory rights order, means persons who for the time being have any interest in any of the land comprised in the order, or have, apart from the order, a right to occupy any of that land, or are entitled to any right restrictive of the use of any of that land: see s 5(6) (amended by the Coal Industry Act 1975 s 4(2), Sch 3 para 2); Opencast Coal Act 1958 s 51(1) (amended by the Coal Industry Act 1975 Sch 3 para 9).

15 Ie subject to the provisions of the Opencast Coal Act 1958 s 5 (as amended): see s 4(1B) (as added: see note 18 *infra*).

16 Ie an application as is mentioned in *ibid* s 4(1A) (as added): see s 4(1B) (as added: see note 18 *infra*).

17 For the meaning of 'successor' see PARA 415 note 6 ante.

18 Opencast Coal Act 1958 s 4(1B)(a) (s 4(1B) added by the Coal Industry Act 1994 Sch 8 para 2(2)).

19 Opencast Coal Act 1958 s 4(1B)(b) (as added: see note 18 supra).

20 See PARA 429 post.

21 See PARA 430 post.

22 See PARA 431 post.

23 As to the requirements in relation to opencast planning permission see PARA 432 post.

24 Opencast Coal Act 1958 s 11(1) (substituted by the Local Land Charges Act 1975 s 17(2), Sch 1). Any rules made under the Local Land Charges Act 1975 s 14 (as amended) for the purposes of the Opencast Coal Act 1958 s 11 (as amended) must include provision for cancelling the registration of a compulsory rights order if the Secretary of State decides not to confirm the order, or if the order is revoked, or at the end of the period for which it has effect; and for varying the registration of such an order if the order as confirmed by the Secretary of State differs from the order as made, or if the order is subsequently varied: s 11(3) (amended by the Local Land Charges Act 1975 s 19(1), Schs 1, 2). See also the Local Land Charges Rules 1977, SI 1977/985 (as amended). As to land charges generally see LAND CHARGES.

25 See PARA 453 post.

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423. Duration, variation and revocation of compulsory rights order.

The period for which a compulsory rights order has effect is a period beginning with the date on which the order becomes operative¹, and of such duration, not exceeding 20 years, as may be specified in the order².

Such an order may not be varied by extending the period for which it is to have effect³, provided that where the period specified in the order is less than 20 years, this provision⁴ does not prevent the variation of the order by the extension of that period, if the period as extended does not exceed 20 years⁵.

1 This date is referred to in the Opencast Coal Act 1958 s 4(2) (as substituted) as 'the operative date': s 51(1).

2 Ibid s 4(2) (substituted by the Coal Industry Act 1975 s 4(1)). The Opencast Coal Act 1958 s 4(2) (as substituted) is subject to the provisions of Pt III (ss 37-53) (as amended) as to the variation of orders: see s 4(2) (as so substituted). The power to make compulsory rights orders has not been exercisable since 31 December 1999: see PARA 405 ante.

3 Ibid s 49(5).

4 Ie ibid s 49(5) (as amended): see s 49(5) proviso (as substituted: see note 5 infra).

5 See ibid s 49(5) proviso (substituted by Coal Industry Act 1975 s 4(2), Sch 3 para 8). Note that the power to make compulsory rights orders is not exercisable after 31 December 1999: see s 52(1); and PARA 405 note 15 ante.

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424. Effect of compulsory rights order.

As from the date of entry¹, and during the period (referred to as 'the period of occupation') for which, on and after that date, a compulsory rights order has effect², it confers upon the person entitled to the rights conferred by the order³, and upon persons authorised by that person, the like rights to occupy the land comprised in the order, and to exclude other persons from it, as if that person had acquired a freehold interest in the entirety of that land with vacant possession and free from incumbrances of any description⁴.

In addition, a compulsory rights order confers upon the person entitled to the rights conferred by the order, and upon persons authorised by that person, the right during the period of occupation, as against all persons directly concerned⁵, to carry out, on or in relation to any of the land comprised in the order, all such operations as may appear to that person, in relation to the opencast planning permission referred to in the order, to be requisite for, or incidental to, the permitted activities⁶. Such an order also confers rights of working minerals (other than coal), and rights relating to timber, crops and chattels⁷.

1 'The date of entry' is the date on which the rights conferred by the order are to become exercisable and which is specified in the notice referred to in the Opencast Coal Act 1958 s 5(2) (as amended) (see PARA 434 post); see s 5(2) (as amended); s 51(1).

2 Ibid s 5(4) (as amended: see note 4 infra); s 51(1) (amended by the Coal Industry Act 1975 s 4(2), Sch 3 para 9). As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

3 Subject to ibid s 5(5B) (as added), the rights conferred by a compulsory rights order: (1) are exercisable by a successor of the original applicant for the order only where the Coal Authority has transferred to that successor the entitlement to exercise the rights conferred by the order; but (2) where the Authority has so transferred them, are not, at any time after the transfer, exercisable by any person in his capacity as the original applicant or as a previous successor of that applicant; and references in the Opencast Coal Act 1958 to the person entitled to the rights conferred by a compulsory rights order are references to the person who is for the time being the person by whom those rights are exercisable in accordance with s 4(1B) (as added) and s 5 (as amended): s 5(5A) (added by the Coal Industry Act 1994 s 52(2), Sch 8 para 3(3)).

Where at any time after an application for a compulsory rights order has been made and before any order made on that application is confirmed (a) any person becomes the successor of the original applicant for the order and notifies that fact (i) if no order has been made on the application, to the Coal Authority, or (ii) if such an order has been made, to the Secretary of State; and (b) the Authority or, as the case may be, the Secretary of State decides to proceed in relation to the application or order in accordance with the Opencast Coal Act 1958 s 5(5B) (as added), the provisions of the Act and of any enactment applied by the Act have effect as if the application had been made by that person, as if he had the same right to make it as the original applicant and as if anything done for the purposes of the application by or in relation to the original applicant or a previous successor had been done by or in relation to that person: s 5(5B) (added by the Coal Industry Act 1994 Sch 8 para 3(3)).

The Coal Authority or, as the case may be, the Secretary of State (A) is to make a transfer under the Opencast Coal Act 1958 s 5(5A) (as added) by giving written notice of the transfer to each of the persons who, in consequence of the transfer, is to cease to be, or is to become, entitled to the rights conferred by the order; (B) may by notice to the successor make any modifications of a compulsory rights order which are necessary in consequence only of the making of a transfer under s 5(5A) (as added); and (c) may make a decision to proceed in accordance with s 5(5B) (as added) subject to compliance by the successor giving the notification with such conditions as that Authority or the Secretary of State thinks fit: s 5(5C) (added by the Coal Industry Act 1994 Sch 8 para 3(3)). As to the Coal Authority see PARA 52 et seq ante. As to the Secretary of State see PARA 4 ante.

4 See the Opencast Coal Act 1958 s 5(1) (amended by the Coal Industry Act 1975 s 4(2), Sch 3 para 2); the Opencast Coal Act 1958 s 5(4) (amended by the Coal Industry Act 1994 Sch 8 para 3(1), (2)). In relation to a

compulsory rights order which provides that its operation is limited to particular interests or rights (see PARA 430 post), the Opencast Coal Act 1958 s 5(4) (as amended), has effect as if for the words from 'confer upon the person entitled to the rights conferred by the order' to the words 'exclude other persons therefrom' there were substituted the words 'as against all persons directly concerned (defined for this purpose in PARA 430 note 2 post), confer upon the person entitled to the rights conferred by the order, and upon persons authorised by that person, the like right to exclude persons from the land comprised in the order': s 8(3)(b) (amended by the Coal Industry Act 1975 s 5(3), Sch 5; and the Coal Industry Act 1994 Sch 8 paras 1, 5).

5 For the meaning of 'persons directly concerned' see PARA 422 note 14 ante. As to Crown and Duchy interests, however, see PARA 422 note 7 ante. For the meaning of 'persons directly concerned' where the order is limited to particular interests or rights see PARA 430 note 2 post.

6 Opencast Coal Act 1958 s 5(5) (amended by the Coal Industry Act 1975 s 4(2), Sch 3 para 2; the Housing and Planning Act 1986 s 39(3), Sch 8 Pt I para 3; and the Coal Industry Act 1994 Sch 8 para 3(2)). For the meaning of 'opencast planning permission' see PARA 407 note 3 ante. For the meaning of 'permitted activities' see PARA 407 note 5 ante. As to the making available of alternative rights of way in lieu of suspended rights of way see PARA 415 text and note 10 ante. As to limitations see PARAS 429-431 post.

7 See PARAS 425-428 post.

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425. Rights of working minerals other than coal.

A compulsory rights order¹ confers upon the person entitled to the rights conferred by the order², and upon persons authorised by that person, the right to get and carry away any minerals³ worked in the exercise of rights conferred by the order, in so far as any such minerals are not already the property of that person; and any minerals got and carried away by virtue of this provision⁴, and removed from the land⁵ comprised in the order, become the property of the person entitled to the rights conferred by the order⁶.

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

2 See PARA 424 note 4 ante.

3 As to the meaning of 'minerals' see PARA 12 note 22 ante. For these purposes, 'minerals' does not include coal unless it is coal that is not vested in the Coal Authority: see PARAS 3, 67 ante. As to the Coal Authority see PARA 52 et seq ante.

4 Ie the Opencast Coal Act 1958 s 10(1) (as amended).

5 As to the meaning of 'land' see PARA 405 note 4 ante.

6 See the Opencast Coal Act 1958 s 10(1) (amended by the Coal Industry Act 1994 s 52(2), Sch 8 para 6).

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426. Rights concerning timber.

Where, in the exercise of rights conferred by a compulsory rights order¹, any trees are felled, or any buildings, fences, sheds or other fixtures or structures are dismantled, the order confers upon the person entitled to the rights conferred by the order², and upon persons authorised by that person, the right to carry away and dispose of the timber, or, as the case may be, of any resulting materials; and any timber or minerals³ carried away by virtue of this provision⁴, and removed from the land⁵ comprised in the order, become the property of the person entitled to the rights conferred by the order⁶.

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

2 See PARA 424 note 4 ante.

3 As to the meaning of 'minerals' see PARA 12 note 22 ante.

4 Ie the Opencast Coal Act 1958 s 10(2) (as amended)

5 As to the meaning of 'land' see PARA 405 note 4 ante.

6 See the Opencast Coal Act 1958 s 10(2) (amended by the Coal Industry Act 1994 s 52(2), Sch 8 para 6).

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427. Rights concerning crops.

Where on the date of entry¹ any crops were growing on any of the land² comprised in a compulsory rights order³, or any crops are grown on any of that land during the period of occupation⁴, the order confers upon the person entitled to the rights conferred by the order, and upon persons authorised by that person, the right during the period of occupation to harvest or lift crops and to remove or otherwise dispose of them; and any crops harvested or lifted by virtue of this provision⁵ becomes the property of the person entitled to the rights conferred by the order⁶.

1 For the meaning of 'the date of entry' see PARAS 424 note 1 ante, 434 note 2 post.

2 As to the meaning of 'land' see PARA 405 note 4 ante.

3 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

4 For the meaning of 'period of occupation' see PARA 424 ante.

5 Ie the Opencast Coal Act 1958 s 10(3) (as amended).

6 See ibid s 10(3) (amended by Coal Industry Act 1994 s 52(2), Sch 8 para 6).

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428. Right to remove chattels.

At any time on or after the operative date¹ of a compulsory rights order², the person entitled to the rights conferred by the order may serve notice³ on the person who is for the time being entitled to possession of any chattel⁴ which is on, under or over any of the land⁵ comprised in the order, requiring him to remove it from that land within such period, not being less than 56 days from the date of service of the notice, as may be specified in the notice⁶.

If the person on whom a notice is so served fails to comply with the notice within the period specified in it, the person who served the notice may cause the chattel to which the notice relates to be removed from the land comprised in the order, or to be removed from one part of that land to another part of it, and is not liable for any loss or damage attributable to the removal except any such loss or damage which is shown to be due to failure to exercise reasonable care⁷. Where any person causes a chattel to be so removed⁸, that person may dispose of the chattel, by sale, destruction or otherwise, as that person may think fit, unless before the end of the period of three months beginning with the date of the removal the person for the time being entitled to possession of the chattel claims it from the person who caused the chattel to be removed and takes all reasonable steps for accepting custody of it⁹.

Where a chattel is sold in the exercise of the powers so conferred, the person who makes the sale must pay the proceeds of sale to the person who was entitled to possession of the chattel immediately before the sale, and the receipt of that person is a sufficient discharge to the person who makes the sale for those proceeds¹⁰.

1 For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

2 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

3 As to the service of notices see PARA 413 ante.

4 For the purposes of the Opencast Coal Act 1958 s 12 (as amended), 'chattel' includes apparatus of any description, whether above or below the surface of the land: s 12(5).

5 As to the meaning of 'land' see PARA 405 note 4 ante.

6 Opencast Coal Act 1958 s 12(1) (amended by the Coal Industry Act 1994 s 52(2), Sch 8 para 8(1)). The Opencast Coal Act 1958 s 12(1) (as amended) does not apply to any apparatus belonging to statutory undertakers and used by those undertakers for the purposes of their undertaking or belonging to an internal drainage board and used by that board for the purposes of their functions: s 12(1) proviso (amended by the Water Act 1989 s 190, Sch 25 para 26). For the meaning of 'statutory undertakers' see PARA 411 note 16 ante. 'Functions' includes powers and duties, and references to the performance of functions are to be construed accordingly: Opencast Coal Act 1958 s 51(1).

7 See *ibid* s 12(2) (amended by the Coal Industry Act 1994 Sch 8 para 8(2), (4), (5)). Where the person who has served a notice under the Opencast Coal Act 1958 s 12(1) (as amended) ceases, without exercising any power under s 12(2) (as amended), to be the person entitled to the rights under the compulsory rights order, that notice ceases to have effect for the purposes of s 12 (as amended): see s 12(2A) (added by the Coal Industry Act 1994 Sch 8 para 8(3)).

8 *Ie* removed under the Opencast Coal Act 1958 s 12(2) (as amended): see s 12(3) (as amended: see note 9 *infra*).

9 See *ibid* s 12(3) (amended by the Coal Industry Act 1994 Sch 8 para 8(2), (4), (5)).

10 See the Opencast Coal Act 1958 s 12(4) (amended by the Coal Industry Act 1994 Sch 8 para 8(2), (4), (5)).

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429. General limitations on compulsory rights orders.

Nothing in the provisions of the Opencast Coal Act 1958 relating to the effect of opencast site orders¹ is to be construed as authorising any interference with the exercise of a public right of way².

The rights conferred by a compulsory rights order³ to carry out operations upon the land⁴ comprised in the order⁵ do not affect any of the following rights⁶ (but this is without prejudice to the operation of the right⁷ to exclusive occupation⁸):

- 192 (1) any right of support for any land not comprised in the order, or for any building or structure on any such land, or any right of action of any person in so far as it arises from the withdrawal of support to which he is entitled for any such land, building or structure⁹;
- 193 (2) any rights of any statutory water undertakers¹⁰ under any public general Act, or under any byelaw made by virtue of such an Act, or under any local enactment¹¹, in so far as (apart from the Opencast Coal Act 1958), the Act, byelaw or enactment restricts, or enables the undertakers to restrict, the working of coal¹² or other minerals¹³, or the doing of any other act, on land comprised in the order¹⁴;
- 194 (3) any rights of any statutory undertakers¹⁵, or of any internal drainage board¹⁶ in respect of any apparatus on, under or over land comprised in the order, being apparatus in respect of which, at any time since the granting of the opencast planning permission¹⁷ referred to in the order, the person entitled to the rights conferred by the compulsory rights order has been entitled to serve a notice under the provisions of the Town and Country Planning Act 1990, applied by the Opencast Coal Act 1958¹⁸;
- 195 (4) the rights conferred by any agreement to which the person entitled to the rights conferred by the compulsory rights order is or is deemed to be a party and which is and for the time being in force whereby (apart from the Opencast Coal Act 1958) that person is required to leave any coal unworked¹⁹;
- 196 (5) any rights of the body carrying on a railway, canal, inland navigation, harbour or dock undertaking (not being rights falling within heads (1) to (3) above) under any enactment (whether contained in a public general Act or in any other Act) in so far as (apart from the Opencast Coal Act 1958) the enactment would operate so as either to restrict, or enable that body to restrict, the working of coal or other minerals on land comprised in the order which is adjacent to a railway, waterway, harbour, dock or other works situated on land not comprised in the order, being works vested in that body or works which they have any right or duty to maintain²⁰, or to require, or enable that body to require, coal or other minerals on land comprised in the order to be left unworked for the protection or support of such a railway, waterway, harbour, dock or other works²¹; and
- 197 (6) any right of action of a person who is not a person directly concerned²², or any right of action of a person directly concerned in so far as it arises otherwise than by virtue of his being entitled to an interest in or right over land, or in so far as it arises by virtue of his being entitled to an interest in, or right over, land not comprised in the order²³.

- 1 le in the Opencast Coal Act 1958 s 5 (as amended) (see PARA 424 ante): see s 7(6) (as amended: see note 2 infra).
- 2 Ibid s 7(6) (amended by the Coal Industry Act 1975 ss 4(2), 7(4), Sch 3 para 4, Sch 5). This is without prejudice to the Opencast Coal Act 1958 s 7(1)-(5) (as amended): see s 7(6) (as so amended). As to the suspension of certain public rights of way see PARAS 417-420 ante.
- 3 As to compulsory rights orders see ibid s 4 (as amended); and PARA 424 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.
- 4 As to the meaning of 'land' see PARA 4057 note 4 ante.
- 5 See the Opencast Coal Act 1958 s 5(5) (as amended); and PARA 424 et seq ante.
- 6 Ibid s 7(1) (amended by the Coal Industry Act 1975 Sch 3 para 4(1), (2), Sch 5).
- 7 le in the Opencast Coal Act 1958 s 5(4) (as amended) (see PARA 424 ante): s 7(5) (as amended: see note 8 infra). As to rights of occupation see PARA 424 ante.
- 8 Ibid s 7(5) (amended by the Coal Industry Act 1975 Sch 3 para 4, Sch 5).
- 9 Opencast Coal Act 1958 s 7(2)(a). As to rights of support generally see PARA 116 et seq ante.
- 10 For the purposes of ibid s 7 (as amended), 'statutory water undertakers' means, the Environment Agency, a water undertaker or a sewerage undertaker: s 7(8) (substituted by the Coal Industry Act 1994 s 52(2), Sch 8 para 4(c); and amended by the Environment Act 1995 s 120, Sch 22 para 5(1)). As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; WATER AND WATERWAYS vol 100 (2009) PARA 17.
- 11 For the purposes of the Opencast Coal Act 1958 s 7 (as amended), 'local enactment', means any local statutory provision within the meaning of the Water Industry Act 1991: Opencast Coal Act 1958 s 7(8) (as substituted: see note 10 supra).
- 12 For the meaning of 'coal' see PARA 405 note 5 ante.
- 13 As to the meaning of 'minerals' see PARA 12 note 22 ante. As to the working of coal or other minerals see PARA 407 note 5 ante.
- 14 Opencast Coal Act 1958 s 7(2)(b) (amended by the Water Act 1989 s 190, Sch 25 para 26, Sch 27 Pt I).
- 15 For the meaning of 'statutory undertakers' see PARA 411 note 16 ante.
- 16 As to internal drainage boards see the Land Drainage Act 1991; and WATER AND WATERWAYS vol 101 (2009) PARA 569.
- 17 For the meaning of 'opencast planning permission' see PARA 407 note 3 ante.
- 18 le the Opencast Coal Act 1958 s 13 (repealed): see s 7(2)(c) (amended by the Water Act 1989 s 190, Sch 25 para 26, Sch 27 Pt I; and the Coal Industry Act 1994 Sch 8 para 4(a)).
- 19 Opencast Coal Act 1958 s 7(3)(a) (amended by the Coal Industry Act 1975 s 7(4), Sch 5; and the Coal Industry Act 1994 Sch 8 para 4(b)).
- 20 Opencast Coal Act 1958 s 7(3)(b)(i). These provisions clearly refer to the mining codes; see further PARA 137 et seq ante.
- 21 Ibid s 7(3)(b)(ii). See also note 20 supra.
- 22 See ibid s 7(4)(a). For the meaning of 'person directly concerned' see PARA 422 note 14 ante. A person is not to be taken to be a person directly concerned in relation to a compulsory rights order by reason only that he is entitled to the rights specified in s 7(2), (3) (as amended): see s 7(7) (amended by the Coal Industry Act 1975 Sch 3 para 4, Sch 5).
- 23 See the Opencast Coal Act 1958 s 7(4)(b), which is modified in the case of limited compulsory rights orders by s 8(3)(c): see PARA 430 note 2 post.

UPDATE

429 General limitations on compulsory rights orders

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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430. Particular limitation of compulsory rights orders.

A compulsory rights order¹ may provide that its operation is to be limited so as to extend only to such one or more interests or rights as may be specified in the order². The interests or rights which may be so specified are: (1) an easement or similar right³ in respect of the whole or part of the land comprised in the order⁴; (2) a right restrictive of the use of the whole or part of that land⁵; and (3) the interest or rights created or conferred by a mining lease⁶ or order conferring working rights⁷ in respect of minerals⁸ in or under that land or part of it⁹.

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

2 Ibid s 8(1) (amended by the Coal Industry Act 1975 ss 4(2), 7(4), Sch 3 para 5(1), Sch 5). In relation to a compulsory rights order which provides that its operation is to be limited as mentioned in the Opencast Coal Act 1958 s 8(1) (as amended), 'persons directly concerned' means persons who for the time being are entitled to any interest or right specified in the order, and does not include any other person (s 8(3)(a)); and s 5(4) (as amended) and s 7(4)(b) (see PARAS 426, 431 ante) have effect subject to modifications (see s 8(3)(b), (c) (s 8(3) (b) amended by the Coal Industry Act 1975 ss 4(2), 7(4), Sch 3 para 5(1), Sch 5; and the Coal Industry Act 1994 s 52, Sch 8 para 5)). Cf para 424 notes 4-5 ante.

3 'Similar right', where the reference is to an easement or similar right in relation to land, means any of the following: any right to take game or fish or other sporting right exercisable in respect of that land, any right to fell and remove trees, any right to take timber or other wood, water, turf or other materials from it, any right to work minerals on it (otherwise than by virtue of a mining lease (see note 6 infra) or of an order conferring working rights (see note 7 infra)), and any right to depasture cattle or other animals on it (ibid s 51(3)), except any such sporting or other right which subsists only as a right incidental to the ownership of the land or to some other interest in it or to a right to occupy it (s 51(3)(a)), or which is exercisable by virtue of a licence granted otherwise than for valuable consideration (s 51(3)(b)). Any right over land which constitutes an easement or similar right in relation to it, if apart from s 51(3) it would not constitute an interest in that land, is to be treated for this purpose as constituting an interest in it: s 51(3).

4 See ibid s 8(2)(a).

5 See ibid s 8(2)(b).

6 'Mining lease' means a lease for the purpose of working and getting minerals, whether by underground or by surface working; and in this definition 'lease' includes an underlease and an agreement for a lease or underlease and a tenancy agreement, and also includes a licence, but does not include an option to take a lease; underlease or tenancy agreement, and does not include a mortgage: ibid s 51(1). 'Mortgage' includes any charge or lien on property for securing money or money's worth, and 'mortgagee' and 'mortgagor' are construed accordingly: s 51(1).

7 'Order conferring working rights' means an order made under the Mines (Working Facilities and Support) Act 1966 (see PARA 383 et seq ante): Opencast Coal Act 1958 s 51(1) (amended by the Mines (Working Facilities and Support) Act 1966 s 15(4)).

8 As to the meaning of 'minerals' see PARA 12 note 22 ante.

9 See the Opencast Coal Act 1958 s 8(2)(c).

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431. Property not to be included in compulsory rights orders.

A compulsory rights order¹ cannot comprise any part of a building which, at the time when the order was made, was wholly or partly occupied as a dwelling house², nor may it comprise any part of the land adjacent to such a building which, at that time, was occupied together with the whole or part of that building and either was within 50 yards from a part of that building³ or, provided it was not agricultural land⁴, formed part of a garden, yard, court or forecourt belonging to that building⁵.

No compulsory rights order could be made so as to comprise any land which was or had been comprised in a previous compulsory rights order as confirmed by the Secretary of State⁶ other than a previous order which, as so confirmed, was a limited order⁷. Nor could a compulsory rights order, as confirmed by the Secretary of State, comprise any land of which possession had previously been taken in the exercise of emergency powers⁸, and which had at any time been retained in the exercise of those powers for the purpose of working coal on that land, or on contiguous land, by opencast operations⁹ and had before the confirmation of the order ceased to be so retained¹⁰. Exceptionally, a compulsory rights order may include such land if, at the time of confirming the order, the Secretary of State was satisfied that there were special circumstances existing at that time, or special circumstances relating to the land in question, which justified its inclusion in the order¹¹.

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

2 'Dwelling house' is not defined in the Opencast Coal Act 1958, but see eg *Lewin v End* [1906] AC 299 at 304, HL, where Lord Atkinson defined a dwelling house as a house in which people actually live or which is physically capable of being used for human habitation; *Macmillan & Co Ltd v Rees* [1946] 1 All ER 675, CA, where it was held that premises are not to be regarded as a dwelling house by reason only of their use for meals or for sleeping at night. See also *Lewin v End* supra at 302 per Lord Loreburn LC; *Re 1-4, White Row Cottages, Bewerley* [1991] Ch 441 at 446, 447, [1991] 4 All ER 50 at 53, 54 per Mummery J; and *Batey (Inspector of Taxes) v Wakefield* [1982] 1 All ER 61 at 63, 64, [1981] STC 521 at 523, 524, CA, per Fox LJ.

3 See the Opencast Coal Act 1958 s 9(1)(a).

4 'Agricultural land' means land used for agriculture which is so used for the purposes of a trade or business: *ibid* s 51(1).

5 See *ibid* s 9(1)(b).

6 As to the Secretary of State see PARA 4 ante.

7 See the Opencast Coal Act 1958 s 9(3). As to the confirmation of compulsory rights orders see PARA 422 ante. As to limited orders see PARA 430 ante.

8 See *ibid* s 9(4)(a) (s 9(4) amended by the Coal Industry Act 1975 Sch 3 para 6). 'Emergency powers' means any powers exercisable by virtue of the Defence (General) Regulations 1939, SR & O 1939/927 (revoked), or by virtue of the Requisitioned Land and War Works Act 1945 or by virtue of the prerogative of the Crown: Opencast Coal Act 1958 s 51(1).

9 See *ibid* s 9(4)(b) (as amended: see note 8 supra).

10 See *ibid* s 9(4)(c) (as amended: see note 8 supra).

11 See *ibid* s 9(4) (as amended: see note 8 *supra*).

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(ii) Procedure

432. Requirements in relation to opencast planning permission.

A compulsory rights order¹ could only be made if opencast planning permission² had been applied for or granted in respect of the land³ comprised in the order or was deemed to have been granted in respect of it⁴. Where such an order was made before opencast planning permission had been granted, the Secretary of State⁵ could not confirm⁶ it unless such permission in respect of that land had first been granted⁷. Where such an order was made in a case where opencast planning permission had been granted or was deemed to have been granted, the order, as from the time when it was made, must include a reference to the permission⁸.

If opencast planning permission is granted in respect of land comprised in such an order and the Secretary of State subsequently confirms the order, the order as confirmed must include a reference to the permission⁹. No such order, as confirmed, may extend to any land which is not comprised in the permission referred to in the order¹⁰.

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

2 For the meaning of 'opencast planning permission' see PARA 407 note 3 ante.

3 As to the meaning of 'land' see PARA 405 note 4 ante.

4 Opencast Coal Act 1958 s 4(6) (s 4(6), (6A)-(6D) substituted by the Housing and Planning Act 1986 s 39(3), Sch 8 Pt I para 2(2)).

5 As to the Secretary of State see PARA 4 ante.

6 As to confirmation see PARA 422 ante.

7 See the Opencast Coal Act 1958 s 4(6A) (as substituted: see note 4 supra).

8 See *ibid* s 4(6B) (as substituted: see note 4 supra).

9 See *ibid* s 4(6C) (as substituted: see note 4 supra).

10 See *ibid* s 4(6D) (as substituted: see note 4 supra).

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433. Procedure for making compulsory rights order.

The procedure for making a compulsory rights order¹ by the Coal Authority² was similar to that to be followed by a local authority making a compulsory purchase order in accordance with the standard authorisation procedure³. The Lands Clauses Acts and the Compulsory Purchase Act 1965⁴ do not apply to the compulsory acquisition of rights by virtue of a compulsory rights order, or to the taking or retention of possession of land in the exercise of such rights⁵.

The compulsory rights order had to be in the prescribed form⁶ and describe the land to which it applies by reference to a map⁷. Before submitting the order to the Secretary of State, the Authority had to publish a notice⁸: (1) stating that the order had been made and was about to be submitted for confirmation; (2) describing the land and stating the purpose for which the land was required; (3) naming a place within the locality where a copy of the order and map referred to could be inspected; and (4) specifying the time (not being less than 21 days from the first publication of the notice) within which, and the manner in which, objections to the order could be made⁹.

The Authority had to: (a) serve on all persons who at the time when notice of the order was first published¹⁰ were known to the Authority to be persons directly concerned¹¹ a notice in the prescribed form¹² stating the effect of the order and that it was about to be submitted for confirmation, and specifying the time (not being less than 21 days from service of the notice) within which, and the manner in which, objections could be made¹³; and (b) affix conspicuously to some conspicuous object or objects on the land comprised in the order a notice or notices containing the particulars specified in head (a) above¹⁴.

The same provisions applied, subject to modifications, to the confirmation of a compulsory rights order, and the hearing or disregarding of objections, as apply in the case of compulsory purchase orders under the standard authorisation procedure¹⁵. Except where the Secretary of State was proceeding concurrently with respect to an application for opencast planning permission¹⁶ and a compulsory rights order, he could disregard an objection to such an order if he was satisfied that it related to the question whether opencast planning permission should be, or should have been, granted and either it related exclusively to that question, or in so far as it related to other matters, they consisted entirely of matters which could be dealt with in the assessment of compensation¹⁷.

Unless all persons interested consented, the order as confirmed by the Secretary of State did not confer on the Authority rights of occupation and use of any land which the order would not have conferred if it had been confirmed without modification¹⁸, and notice had to be published and served after confirmation in the same manner as in the case of compulsory purchase orders and in the form prescribed¹⁹.

The provisions applicable to the purchase of certain descriptions of land by means of a compulsory purchase order²⁰ applied with modifications to the acquisition of compulsory rights in respect of that land by means of a compulsory rights order²¹, as did the provisions regarding the validity and date of operation of compulsory purchase orders and certificates²².

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

2 As to the Coal Authority see PARA 52 et seq ante.

3 The provisions of the Acquisition of Land Act 1981 Pt II (ss 10-15) (as amended), Pt III (ss 16-22) (as amended) and Pt IV (ss 23-27) (as amended) apply (with modifications) to compulsory rights orders, subject to s 29 (as amended): Opencast Coal Act 1958 s 4(4A) (added by the Acquisition of Land Act 1981 s 34, Sch 4 para 11(2)); and see the Acquisition of Land Act 1981 s 29(1). The Acquisition of Land Act 1981 Pts II, III, IV (all as amended) apply with the substitution of references to compulsory rights orders for references to compulsory purchase orders, of references to the Coal Authority for references to the acquiring authority, of references to the Secretary of State for references to the confirming authority, and of references to operating so as to confer temporary rights of occupation and use of land for references to authorising the compulsory purchase of land: see s 29(2) (amended by the Coal Industry Act 1994 s 67(1), (8), Sch 9 para 27(2), Sch 11 Pt II). As to compulsory purchase generally see COMPULSORY ACQUISITION OF LAND. As to the Secretary of State see PARA 4 ante.

4 As to the Lands Clauses Acts and the Compulsory Purchase Act 1965 generally see COMPULSORY ACQUISITION OF LAND.

5 Opencast Coal Act 1958 s 4(7) (amended by the Acquisition of Land Act 1981 Sch 4 para 11(3)).

6 Anything which, by the Acquisition of Land Act 1981 Pt II or Pt III (both as amended), or Sch 1 or Sch 3 (both as amended), is required or authorised to be prescribed is prescribed by regulations made by the Secretary of State by statutory instrument: see s 7(2). In the application of the Acquisition of Land Act 1981 to compulsory rights orders 'prescribed' means prescribed by regulations under the Opencast Coal Act 1958: Acquisition of Land Act 1981 s 29(10). As to the prescribed form in connection with compulsory rights orders see the Opencast Coal (Compulsory Rights, Drainage and Rights of Way) (Forms) Regulations 1994, SI 1994/3097, reg 3, Form 2.

7 Acquisition of Land Act 1981 s 10(2) (as applied: see note 3 supra).

8 In the prescribed form: see the Opencast Coal (Compulsory Rights, Drainage and Rights of Way) (Forms) Regulations 1994, SI 1994/3097, reg 3, Form 3.

9 See the Acquisition of Land Act 1981 ss 10(3), 11(1), (2) (as applied: see note 3 supra).

10 In published under *ibid* s 11: see s 29(4).

11 For the meaning of 'persons directly concerned' see PARAS 422 note 14, 430 note 2 ante (definition applied by *ibid* s 29(11) (substituted by the Housing and Planning Act 1986 s 39(3), Sch 8 Pt II para 18)).

12 See the Opencast Coal (Compulsory Rights, Drainage and Rights of Way) (Forms) Regulations 1994, SI 1994/3097, reg 3, Form 4.

13 Acquisition of Land Act 1981 s 12(1)(a) (substituted by s 29(4)).

14 *Ibid* s 12(1)(b) (as substituted: see note 13 supra).

15 See *ibid* s 29(5). As to the procedure for confirming an order see s 13, which applied with the substitution of a reference to any person who, in relation to the order, was a person directly concerned for any reference to any owner, lessee or occupier: see s 29(5).

16 For the meaning of 'opencast planning permission' see PARA 407 note 3 ante (definition applied by *ibid* s 29(11) (substituted by the Housing and Planning Act 1986 Sch 8 Pt II para 18)).

17 Acquisition of Land Act 1981 s 29(6) (amended by the Housing and Planning Act 1986 Sch 8 Pt II para 18). This provision is without prejudice to the operation of the Acquisition of Land Act 1981 s 13: see s 29(6) (as so amended).

18 See *ibid* s 14 (as applied: see note 3 supra). As to land not originally included in the order see s 14; and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 569.

19 See *ibid* s 15 (as applied: see note 3 supra). As to notices after confirmation of the order see s 15; and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 571. As to the prescribed form see the Opencast Coal (Compulsory Rights, Drainage and Rights of Way) (Forms) Regulations 1994, SI 1994/3097, reg 3, Form 3.

20 In the provisions of the Acquisition of Land Act 1981 Pt III (as amended): see generally COMPULSORY ACQUISITION OF LAND.

21 See note 3 supra. The Acquisition of Land Act 1981 s 19 (as amended) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 531, 604) applied as if any reference to giving other land in exchange were construed as a reference to making other land available during the period for which the compulsory rights order is to have effect; the provisions of s 19 (as amended) as to the vesting of land, and as to its being made subject to the like

rights, trusts and incidents as the land purchased, applied with the necessary modifications, and s 19(3)(b) (as amended) did not apply: see s 29(7). The prescribed form for the purposes of s 22 in connection with compulsory rights orders, is the Opencast Coal (Compulsory Rights, Drainage and Rights of Way) (Forms) Regulations 1994, SI 1994/3097, reg 3, Form 5.

22 le the provisions of the Acquisition of Land Act 1981 Pt IV (as amended) (see generally COMPULSORY ACQUISITION OF LAND). As to the application of s 23 (as amended) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 610 et seq) see the Acquisition of Land Act 1981 s 29(8). Section 26 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 602 et seq) applied subject to the modification that the date on which the compulsory rights order became operative was to be the date mentioned in s 26(1) or such later date, not being more than one year after confirmation of the order, as might be determined by the Secretary of State and specified in the order as confirmed: see s 29(9).

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434. Notification and challenge of compulsory rights order.

The person on whose application a compulsory rights order¹ was made had to publish, serve and affix notices specifying the date on which the rights conferred by the order were to become exercisable².

Any person who, in relation to the order referred to in such a notice, was a person directly concerned³ and who claimed that any of the relevant requirements⁴ had not been complied with, could, at any time not later than the end of the period of six weeks beginning with the date of the first publication of that notice, make an application to the High Court⁵.

Where, on determining such an application, the court was satisfied that any of the relevant requirements had not been complied with, and that the interests of the applicant had been substantially prejudiced⁶ by the failure to comply with them, the court could, by an order made either generally or with respect to so much of the land comprised in the compulsory rights order as might be specified in the order⁷, declare that the rights which (if all the relevant requirements had been complied with) would have been conferred by the order had not become exercisable, and direct that the order was to cease to have effect as from a specified date⁸.

Subject to such an application or to any proceedings on or in consequence of it, where the first publication of a notice was effected⁹, all the requisite notices of the order referred to in that notice were deemed to have been published, served and affixed¹⁰, and to have specified the date specified in that notice¹¹; that date is deemed for all purposes to be a date satisfying the prescribed requirements¹²; and the exercise of any rights by virtue of the order may not be questioned in any legal proceedings whatsoever on the ground that any of the relevant requirements have not been complied with¹³.

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

2 Ibid s 5(2) (amended by the Coal Industry Act 1994 Sch 8 para 3(1), (2)); Opencast Coal Act 1958 Sch 2 para 13(1)-(5) (Sch 2 para 13 amended by Coal Industry Act 1994 s 52(2), Sch 8 paras 1, 39). See also PARA 424 note 1 ante. As to the service of notices see PARA 413 ante.

The date referred to in the text is known as 'the date of entry' being the date: (1) not less than 56 days after the first publication of a notice specifying that date; and (2) not more than six months after the operative date: s 5(2) (as so amended). As to the meaning of 'not less than 56 days' see *McQueen v Jackson* [1903] 2 KB 163; *Re Hector Whaling Ltd* [1936] Ch 208; cf *Schnabel v Allard* [1967] 1 QB 627, [1966] 3 All ER 816, CA. 'Months' means calendar months: Interpretation Act 1978 ss 5, 22(1), Sch 1, Sch 2 para 4(1)(a) (amended by the Family Law Reform Act 1987 s 33(1), (4), Sch 2 para 74, Sch 4); and see eg *Stewart v Chapman* [1951] 2 KB 792, [1951] 2 All ER 613, DC; *Cartwright v McCormack (Trafalgar Insurance Co Ltd, Third Parties)* [1963] 1 All ER 11, [1963] 1 WLR 18, CA.

3 For the meaning of 'person directly concerned' see PARA 422 note 14 ante.

4 In the Opencast Coal Act 1958 Sch 2 Pt II, 'the relevant requirements' means the requirements of s 5(2), Sch 2 para 13 (both as amended): Sch 2 para 16.

5 Ibid Sch 2 para 14(1). On any such application, the court could by interim order direct, either generally or in relation to any part of the land comprised in the compulsory rights order, that such rights (if any) as were conferred by the order were not to be exercised until the final determination of the proceedings: Sch 2 para 14(2).

6 As to the meaning of 'substantially prejudiced' see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 614.

7 le in the order under the Opencast Coal Act 1958 Sch 2 para 14(3) (see the text to note 8 infra). As to the meaning of 'land' see PARA 405 note 4 ante.

8 Ibid Sch 2 para 14(3).

9 le effected in accordance with ibid Sch 2 para 13(2) (as amended) (see note 2 supra): see Sch 2 para 15.

10 le in accordance with the requirements of ibid Sch 2 para 13 (as amended) (see note 2 supra): see Sch 2 para 15.

11 Ibid Sch 2 para 15(a).

12 Ibid Sch 2 para 15(b). The requirements referred to in the text are those of s 5(2) (as amended): see note 2 supra.

13 Ibid Sch 2 para 15(c). As to the effect of such a provision see COMPULSORY ACQUISITION OF LAND.

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(iii) Particular Consequences of Compulsory Rights Orders

A. PROTECTION OF TENANCIES AND MORTGAGES

435. Breaches of terms and conditions during occupation.

Where a compulsory rights order¹ is in operation or land² is occupied or used in the exercise of rights conferred by such an order, and the land comprised in the order is subject to a tenancy³ or mortgage⁴, the rights of the parties to the tenancy or mortgage are modified⁵. Where any obligation or restriction imposed by the terms and conditions of the tenancy or mortgage would, apart from the Opencast Coal Act 1958, fall to be performed or observed by any such party at a time within the period of occupation⁶, and in consequence of the rights conferred by the order, or of anything done in the exercise of those rights, that obligation or restriction cannot be so performed or observed at that time⁷, the failure to perform or observe it at that time is deemed not to be a breach of any of the terms and conditions of the tenancy or mortgage⁸.

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

2 As to the meaning of 'land' see PARA 405 note 4 ante.

3 'Tenancy' has the meaning assigned to it by the Landlord and Tenant Act 1954 s 69(1) (see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 706); Opencast Coal Act 1958 s 51(1).

4 As to the meaning of 'mortgage' see PARA 430 note 6 ante.

5 See the Opencast Coal Act 1958 s 37, Sch 7 paras 14, 15.

6 Ibid Sch 7 para 14(a). For the meaning of 'the period of occupation' see PARA 424 ante.

7 Ibid Sch 7 para 14(b).

8 Ibid Sch 7 para 14. These provisions are without prejudice to Sch 7 para 4 (as amended) or Sch para 12 (as amended), including those provisions as applied in relation to mortgages by Sch 7 para 7 (as amended) or Sch 7 para 13 (as amended): Sch 7 para 16.

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436. Breaches of terms and conditions after occupation.

Where at any time while any land¹ is comprised in a compulsory rights order² it is subject to a tenancy³ or mortgage⁴ which continues until after the end of the period of occupation⁵, and at any time within 12 months after the end of that period proceedings are brought to enforce a right of re-entry, forfeiture or foreclosure, or a right to damages or any other remedy, in respect of any failure after the end of that period to comply with any of the terms and conditions of the tenancy or mortgage, the person against whom the proceedings are brought may apply in those proceedings for relief⁶.

If the court is satisfied that the failure to comply was attributable to a change in the state of the land resulting from its occupation and use in the exercise of rights conferred by the order it may grant such relief, in respect of the matters to which the proceedings relate, as it considers reasonable in the circumstances⁷.

1 As to the meaning of 'land' see PARA 405 note 4 ante.

2 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

3 For the meaning of 'tenancy' see PARA 435 note 3 ante.

4 As to the meaning of 'mortgage' see PARA 430 note 6 ante.

5 For the meaning of 'the period of occupation' see PARA 424 ante.

6 Opencast Coal Act 1958 s 37, Sch 7 para 15(1).

7 Ibid Sch 7 para 15(2). These provisions are without prejudice to those referred to in PARA 435 note 8 ante: Sch 7 para 16.

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B. ADJUSTMENTS IN RESPECT OF AGRICULTURAL HOLDINGS AND FARM BUSINESS TENANCIES

(A) AGRICULTURAL HOLDINGS

437. Long-term improvements and special system of farming.

Where (1) the land comprised in a compulsory rights order¹ consists of or includes land which immediately before the date of entry² constituted or formed part of an agricultural holding held under a tenancy³ in relation to which the Agricultural Holdings Act 1986 applies⁴ and before that date long-term improvements qualifying for compensation⁵ had been carried out on that land, or a special system of farming qualifying for compensation had been adopted⁶; and (2) the tenancy under which the tenant could have claimed compensation, or a subsequent tenancy under which the tenant has retained or succeeded to the relevant right to compensation, terminates on or after the date of entry, but before the end of the period of occupation⁷, without being succeeded by another such subsequent tenancy⁸, the provisions of the Agricultural Holdings Act 1986 as to compensation for long-term improvements⁹ and for a special system of farming¹⁰ apply with modifications¹¹ to that tenancy¹².

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

2 For the meaning of 'the date of entry' see PARAS 424 note 1, 434 note 2 ante.

3 For the meaning of 'tenancy' see PARA 435 note 3 ante.

4 Opencast Coal Act 1958 s 24(1)(a) (amended by the Agricultural Tenancies Act 1995 s 40, Schedule para 15(1), (2)); Opencast Coal Act 1958 s 37, Sch 7 para 1(1)(a).

5 See *ibid* s 24(7)(a) (as amended); s 24(9) (as amended); and see the text and note 9 *infra*; and PARA 472 post.

6 *Ibid* s 24(1)(b) (amended by the Agricultural Holdings Act 1986 s 100, Sch 14 para 26); Opencast Coal Act 1958 Sch 7 para 1(1)(a). See s 24(7)(b) (as amended); note 10 *infra*; and PARA 472 post.

7 For the meaning of 'the period of occupation' see PARA 424 ante.

8 Opencast Coal Act 1958 Sch 7 para 1(1)(b).

9 See AGRICULTURAL LAND vol 1 (2008) PARAS 436-441.

10 See AGRICULTURAL LAND vol 1 (2008) PARAS 451-452.

11 The provisions referred to in the text apply, in relation to the tenancy, as if, at the termination of the tenancy, the land in question were in the state in which it was immediately before the date of entry (Opencast Coal Act 1958 Sch 7 para 1(2)(a) (as amended: see note 12 *infra*)), and, if the tenant quitted the holding before the termination of his tenancy, they apply as if he had quitted on its termination (Sch 7 para 1(2)(b) (as amended: see note 12 *infra*)). See also PARA 453 note 4 post.

12 *Ibid* Sch 7 para 1(1), (2) (amended by the Agricultural Holdings Act 1986 Sch 14 para 33). The Opencast Coal Act 1958 s 24(5) (as amended) (see PARA 472 post) applies for the purposes of Sch 7 para 1(1), as it applies

for the purposes mentioned in s 24(5) (as amended); and s 24(6) (as amended) (see PARA 472 post) applies in relation to Sch 7 para 1(2) (as amended) as it applies in relation to s 24(2) (as amended): Sch 7 para 1(3).

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438. Position where the land has been restored.

Where land¹ comprised in an agricultural holding² held under a tenancy³ in relation to which the Agricultural Holdings Act 1986 applies is comprised in a compulsory rights order⁴, whether any other land is comprised in the holding, or comprised in the order, or not, and (1) before the date of entry⁵ long-term improvements qualifying for compensation⁶, or a special system of farming qualifying for compensation⁷, had been carried out or adopted on the land⁸; (2) the benefit of the improvements or the increased value attributable to the special system has been replaced or regained, on the restoration⁹ of the land, by works, or the continuous adoption of a new system of farming, of comparable benefit to the land¹⁰; and (3) but for that restoration certain provisions of the Agricultural Holdings Act 1986¹¹ as to compensation for long-term improvements and for a special system of farming would have applied¹², those provisions have effect in relation to those works or that new system as if those works had been carried out, or that system adopted, by the person who carried out or adopted the previous improvements or system¹³.

1 As to the meaning of 'land' see PARA 405 note 4 ante.

2 For the meaning of 'agricultural holding' see PARA 419 note 3 ante.

3 For the meaning of 'tenancy' see PARA 435 note 3 ante.

4 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

5 For the meaning of 'the date of entry' see PARAS 424 note 1, 434 note 2 ante.

6 See PARA 437 text and note 5 ante.

7 See PARA 437 text and note 6 ante.

8 Opencast Coal Act 1958 s 37, Sch 7 para 2(1)(a) (amended by the Agricultural Holdings Act 1986 s 100, Sch 14 para 33; and the Agricultural Tenancies Act 1995 s 40, Schedule para 20(3)). The references in the Opencast Coal Act 1958 Sch 7 para 2(1)(a) (as amended) to the Agricultural Holdings Act 1986 include references to the Agricultural Holdings Act 1948: Opencast Coal Act 1958 Sch 7 para 2(3A) (added by the Agricultural Holdings Act 1986 Sch 14 para 33).

9 As to the meaning of 'restoration' see PARA 415 note 9 ante.

10 Opencast Coal Act 1958 Sch 7 para 2(1)(b) (as amended: see note 8 supra).

11 The provisions referred to are those mentioned in *ibid* s 24(2) (as amended), as extended by s 24(6) (as amended): Sch 7 para 2(1)(b) (as amended: see note 8 supra). See also PARA 437 notes 9-10 ante.

12 *Ie* would have applied as mentioned in *ibid* s 24(3) (as amended) (see PARA 472 note 14 post): Sch 7 para 2(1)(b) (as amended: see note 8 supra).

13 *Ibid* Sch 7 para 2(1) (as amended: see note 8 supra); Sch 7 para 2(2) (amended by the Agricultural Holdings Act 1986 Sch 14 para 33). For these purposes, the Opencast Coal Act 1958 s 24(7), (8) (as amended) (see PARA 472 post) applies as it applies for the purposes of s 24 (as amended): Sch 7 para 2(3).

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439. Compensation for expenses.

Where a tenant is entitled to compensation for long-term improvements or for a special system of farming¹, and (1) after the end of the period of occupation² expenses are incurred in replacing the benefit of the improvements by other long-term improvements of comparable benefit to the land, or in regaining the increased value attributable to that system of farming by the continuous adoption of a special system of farming of comparable benefit to the land³; and (2) the person incurring those expenses, whether he is the landlord or not, is entitled to compensation⁴ in respect of them under the Opencast Coal Act 1958⁵, the provisions of the Agricultural Holdings Act 1986⁶ apply as if the works in respect of which those expenses are incurred were improvements carried out by the landlord at the request of the tenant⁷, if they would not otherwise constitute such improvements⁸.

1 le by virtue of the Opencast Coal Act 1958 s 24 (as amended) (see PARA 472 post): see s 37, Sch 7 para 3(1) (as amended: see note 8 infra).

2 For the meaning of 'the period of occupation' see PARA 424 ante. The power to make compulsory rights orders conferring rights to occupy land has not been exercisable since 31 December 1999: see PARA 405 ante.

3 Opencast Coal Act 1958 Sch 7 para 3(1)(a).

4 le compensation under *ibid* s 22 (see PARA 467 post): see Sch 7 para 3(1)(b).

5 Ibid Sch 7 para 3(1)(b).

6 See AGRICULTURAL LAND vol 1 (2008) PARA 321 et seq.

7 See AGRICULTURAL LAND vol 1 (2008) PARA 340.

8 Opencast Coal Act 1958 Sch 7 para 3(1) (amended by the Agricultural Holdings Act 1986 s 100, Sch 14 para 33). The Opencast Coal Act 1958 s 14(8) (as substituted) does not affect the operation of the Agricultural Holdings Act 1986 s 13, in so far as s 13 applies in accordance with the Opencast Coal Act 1958 Sch 7 para 3(1) (as amended): Sch 7 para 3(2) (amended by the Agricultural Holdings Act 1986 Sch 14 para 33).

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440. Variation of terms of tenancy or mortgage.

Where, immediately before the operative date¹ of a compulsory rights order², any of the land comprised in the order consisted of or included an agricultural holding³ or part of an agricultural holding⁴, and the tenancy⁵ relating to that holding continues until after the end of the period of occupation⁶, the landlord or the tenant of the holding may, by notice in writing served⁷ on his tenant or landlord, demand a reference to arbitration under the Agricultural Holdings Act 1986⁸ of the question whether any of the terms and conditions of the contract of tenancy, including any term or condition relating to rent, should be varied in consequence of any change in the state of the land resulting from the occupation or use of the land in the exercise of rights conferred by the order⁹.

On such a reference the arbitrator must determine what variations, if any, should be made and the date, which must not be earlier than the end of the period of occupation, from which they are to take effect or to be treated as having taken effect, and as from that date the contract of tenancy has effect, or must be treated as having had effect, subject to those variations¹⁰.

These provisions as to variations of tenancies apply to mortgages¹¹ with necessary modifications¹².

1 For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

2 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

3 For the meaning of 'agricultural holding' see PARA 419 note 3 ante. For the purposes of ibid s 37, Sch 7 para 4 (as amended), 'agricultural holding' does not include an agricultural holding held under a farm business tenancy: Sch 7 para 4(7) (added by the Agricultural Tenancies Act 1995 s 40, Schedule para 20(6)).

4 Opencast Coal Act 1958 Sch 7 para 4(1)(a).

5 For the meaning of 'tenancy' see PARA 435 note 3 ante.

6 Opencast Coal Act 1958 Sch 7 para 4(1)(b). For the meaning of 'the period of occupation' see PARA 424 ante.

7 As to the service of notices see PARA 413 ante.

8 The Agricultural Holdings Act 1986 s 84 (as amended) applies to such a reference: Opencast Coal Act 1958 Sch 7 para 4(4) (amended by the Agricultural Holdings Act 1986 s 100, Sch 14 para 33).

9 Opencast Coal Act 1958 Sch 7 para 4(2) (amended by the Agricultural Holdings Act 1986 Sch 14 para 33).

10 Opencast Coal Act 1958 Sch 7 para 4(3). The provisions of Sch 7 para 4 (as amended) do not affect any right of the landlord or tenant, or the jurisdiction of the arbitrator, under the Agricultural Holdings Act 1986 s 12 or s 13 (including s 13 as applied by the Opencast Coal Act 1958 Sch 7 para 3 (as amended)); but where there is a reference to arbitration under either of those sections and under Sch 7 para 4 (as amended), in respect of the same holding, and it appears to the arbitrator that the reference relates wholly or mainly to the consequences of the occupation or use of the land in the exercise of rights conferred by the order, he may direct that proceedings on the two references be taken concurrently: Sch 7 para 4(5), (6) (amended by the Agricultural Holdings Act 1986 Sch 14 para 33).

11 As to the meaning of 'mortgage' see PARA 430 note 6 ante.

12 The provisions of the Opencast Coal Act 1958 Sch 7 para 4(1)-(6) (as amended) apply in relation to mortgages as they apply in relation to contracts of tenancy, as if any reference in Sch 7 para 4(1)-(6) (as amended) to such a contract, or to a tenancy, were a reference to a mortgage, and any reference to land consisting of or including an agricultural holding or part of an agricultural holding were a reference to agricultural land subject to a mortgage but not comprised in a farm business tenancy, and any reference to a landlord or to a tenant were a reference to a mortgagee or to a mortgagor, as the case may be: Sch 7 para 7 (amended by the Agricultural Tenancies Act 1995 Schedule para 20(10)).

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441. Removal of fixtures and buildings.

Where the land comprised in a compulsory rights order¹ consists of or includes the whole or part of an agricultural holding² held under a tenancy³ in relation to which the Agricultural Holdings Act 1986 applies, the requirement⁴ to remove fixtures and buildings has effect in relation to the holding subject to modifications⁵.

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante. As to the meaning of 'land' see PARA 405 note 4 ante.

2 For the meaning of 'agricultural holding' see PARA 419 note 3 ante.

3 For the meaning of 'tenancy' see PARA 435 note 3 ante.

4 Ie the Agricultural Holdings Act 1986 s 10 (see the Opencast Coal Act 1958 Sch 7 para 5(1) (as amended: see note 5 infra)) (including the Agricultural Holdings Act 1986 s 10 as extended by s 79(3) in relation to market gardens: see the Opencast Coal Act 1958 Sch 7 para 5(5) (amended by the Agricultural Holdings Act 1986 Sch 14 para 33)). See AGRICULTURAL LAND vol 1 (2008) PARA 336.

5 Opencast Coal Act 1958 Sch 7 para 5(1) (amended by the Agricultural Holdings Act 1986 s 100, Sch 14 para 33; and the Agricultural Tenancies Act 1995 s 40, Schedule para 20(8)). The modifications are: (1) that only 14 days' notice need be given by the tenant on or after the operative date of the order in respect of a fixture or building on a part of the holding which is within the land comprised in the order (Opencast Coal Act 1958 Sch 7 para 5(2) (amended by the Agricultural Holdings Act 1986 Sch 14 para 33)) (cf the Agricultural Holdings Act 1986 s 10(3)(b)); and (2) where the tenant has given a notice under s 10(3), or under s 10(3) as modified by the Opencast Coal Act 1958 Sch 7 para 5(2) (as amended), and that notice is given on or after the operative date of the order, or, if given before, expires on or after that date (whether or not the landlord has given a counter-notice before that date), the Agricultural Holdings Act 1986 s 10(4) does not apply to the fixture or building (Opencast Coal Act 1958 Sch 7 para 5(3) (amended by the Agricultural Holdings Act 1986 Sch 14 para 33); Opencast Coal Act 1958 Sch 7 para 5(4)). For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

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(B) FARM BUSINESS TENANCIES

442. Tenant's improvements.

Where (1) any part of the land¹ comprised in a compulsory rights order² was held, immediately before the date of entry³, under a farm business tenancy⁴; (2) there have been provided in relation to the tenant's land tenant's improvements in respect of which, immediately before that date, the tenant had a prospective right to compensation⁵ on quitting the holding on the termination of the tenancy⁶; and (3) the farm business tenancy at the end of which the tenant could have claimed compensation for tenant's improvements terminates on or after the date of entry, but before the end of the period of occupation⁷, without being succeeded by another such subsequent tenancy⁸, the provisions of the Agricultural Tenancies Act 1995⁹ apply with modifications to that tenancy¹⁰.

1 As to the meaning of 'land' see PARA 405 note 4 ante.

2 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

3 For the meaning of 'the date of entry' see PARAS 424 note 1, 434 note 2 ante.

4 Opencast Coal Act 1958 s 25A(1)(a) (s 25A added by the Agricultural Tenancies Act 1995 s 40, Schedule para 16); Opencast Coal Act 1958 Sch 7 para 1A(1)(a) (Sch 7 para 1A added by the Agricultural Tenancies Act 1995 Schedule para 20(2)). For the meaning of 'farm business tenancy' see PARA 420 note 7 ante.

5 Ie under the Agricultural Tenancies Act 1995 s 16 (see AGRICULTURAL LAND vol 1 (2008) PARA 311): see the Opencast Coal Act 1958 s 25A(1)(b) (as added: see note 4 supra); Sch 7 para 1A(1)(b) (as added: see note 4 supra).

6 Ibid s 25A(1)(b) (as added: see note 4 supra); Sch 7 para 1A(1)(b) (as added: see note 4 supra).

7 For the meaning of 'the period of occupation' see PARA 424 ante.

8 Opencast Coal Act 1958 Sch 7 para 1A(1) (as added: see note 4 supra).

9 Ie the provisions of the Agricultural Tenancies Act 1995 Pt III (ss 15-27) (see AGRICULTURAL LAND vol 1 (2008) PARAS 310-319): see the Opencast Coal Act 1958 Sch 7 para 1A(2) (as added: see note 4 supra).

10 Ibid Sch 7 para 1A(2) (as added: see note 4 supra). The Agricultural Tenancies Act 1995 Pt III applies in relation to the tenancy mentioned in the Opencast Coal Act 1958 Sch 7 para 1A(1) (as added) as if, at the termination of that tenancy, the land in question were in the state in which it was immediately before the date of entry; and if the tenant under that tenancy quitted the holding before the termination of his tenancy, the Agricultural Tenancies Act 1995 Pt III applies as if he had quitted the holding on the termination of his tenancy: Opencast Coal Act 1958 Sch 7 para 1A(2) (as added: see note 4 supra).

For the purposes of Sch 7 para 1A(2) (as added), 'holding', in relation to a farm business tenancy, and 'termination', in relation to a tenancy, have the same meaning as in the Agricultural Tenancies Act 1995 s 38(1) (see AGRICULTURAL LAND vol 1 (2008) PARAS 302, 305): Opencast Coal Act 1958 Sch 7 para 1A(3) (as added: see note 4 supra).

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443. Position where the land has been restored.

Where land¹ comprised in a farm business tenancy² is comprised in a compulsory rights order³, whether any other land is comprised in the holding, or comprised in the order, or not, and (1) before the date of entry⁴ there had been provided in relation to the land in question tenant's improvements ('the former tenant's improvements') in respect of which, immediately before that date, the tenant had a prospective right to compensation⁵ on quitting the holding on the termination of the tenancy⁶; and (2) at the end of the period of occupation⁷ the circumstances are such that the Agricultural Tenancies Act 1995⁸ would have applied⁹ but for the fact that the benefit of the former tenant's improvements has been replaced, on the restoration¹⁰ of the land, by other improvements ('the new improvements') of comparable benefit to the land¹¹, the Agricultural Tenancies Act 1995¹² has effect in relation to the new improvements as if those improvements were tenant's improvements¹³.

1 As to the meaning of 'land' see PARA 405 note 4 ante.

2 For the meaning of 'farm business tenancy' see PARA 420 note 7 ante.

3 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

4 For the meaning of 'the date of entry' see PARAS 424 note 1, 434 note 2 ante.

5 I.e. compensation under the Agricultural Tenancies Act 1995 s 16 (see AGRICULTURAL LAND vol 1 (2008) PARA 311); see the Opencast Coal Act 1958 Sch 7 para 2A(1) (as added: see note 6 infra).

6 Ibid Sch 7 para 2A(1)(a) (Sch 7 para 2A added by the Agricultural Tenancies Act 1995 s 40, Schedule para 20(4)).

7 For the meaning of 'the period of occupation' see PARA 424 ante.

8 I.e. the Agricultural Tenancies Act 1995 Pt III (ss 15-27) (see AGRICULTURAL LAND vol 1 (2008) PARAS 310-319); see the Opencast Coal Act 1958 Sch 7 para 2A(1)(b) (as added: see note 6 supra).

9 I.e. as mentioned in ibid s 25A(3), (4) (as added): see Sch 7 para 2A(1)(b) (as added: see note 6 supra).

10 As to the meaning of 'restoration' see PARA 415 note 9 ante.

11 Opencast Coal Act 1958 Sch 7 para 2A(1)(b) (as added: see note 6 supra).

12 I.e. the Agricultural Tenancies Act 1995 Pt III (see AGRICULTURAL LAND vol 1(2) (2008) PARAS 310-319): see the Opencast Coal Act 1958 Sch 7 para 2A(2) (as added: see note 6 supra).

13 Ibid Sch 7 para 2A(2) (as added: see note 6 supra). Section 25A(2), (6) (as added) applies for the purposes of Sch 7 para 2A (as added) as it applies for the purposes of s 25A (as added): Sch 7 para 2A(3) (as so added).

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444. Compensation for expenses.

Where a tenant is entitled to compensation¹ for tenant's improvements² and (1) after the end of the period of occupation³ expenses are incurred in replacing the benefit of the tenant's improvements by other improvements of comparable benefit to the land⁴; and (2) the person incurring those expenses, whether he is the landlord or not, is entitled to compensation in respect of those expenses⁵, the Agricultural Tenancies Act 1995⁶ applies as if the works in respect of which those expenses are incurred were not tenant's improvements, if apart from this provision⁷ they would constitute such improvements⁸.

1 Ie by virtue of the Opencast Coal Act 1958 s 25A (as added) (see PARA 442 ante): see Sch 7 para 3A (as added: see note 8 infra).

2 Ie as mentioned in ibid s 25A (as added): see Sch 7 para 3A (as added: see note 8 infra).

3 For the meaning of 'the period of occupation' see PARA 424 ante. The power to make compulsory rights orders conferring rights to occupy land has not been exercisable since 31 December 1999: see PARA 405 ante.

4 As to the meaning of 'land' see PARA 405 note 4 ante.

5 Ie compensation under the Opencast Coal Act 1958 s 22 (see PARA 467 post): see Sch 7 para 3A (as added: see note 8 infra).

6 Ie the Agricultural Tenancies Act 1995 s 13 (see AGRICULTURAL LAND vol 1 (2008) PARA 309): see the Opencast Coal Act 1958 Sch 7 para 3A (as added: see note 8 infra).

7 Ie ibid Sch 7 para 3A (as added).

8 Ibid Sch 7 para 3A (added by the Agricultural Tenancies Act 1995 s 40, Schedule para 20(5)).

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445. Variation of terms of tenancy or mortgage.

Where (1) immediately before the operative date¹ of a compulsory rights order², any of the land³ comprised in the order was subject to a farm business tenancy⁴; and (2) that tenancy continues until after the end of the period of occupation⁵, the landlord or tenant under the tenancy may, by notice in writing served on his tenant or landlord, demand a reference to arbitration of the question whether any of the terms and conditions of the tenancy, including any term or condition relating to rent, should be varied in consequence of any change in the state of the land resulting from the occupation or use of the land in the exercise of rights conferred by the order⁶.

On such a reference, the arbitrator must determine what variations, if any, should be made in the terms and conditions of the tenancy, and the date, not being earlier than the end of the period of occupation, from which any such variations are to take effect or are to be treated as having taken effect; and as from that date the tenancy has effect, or, as the case may be, is treated as having had effect, subject to any variations determined by the arbitrator under this provision⁷.

These provisions as to variations of tenancies apply to mortgages⁸ with necessary modifications⁹.

1 For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

2 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

3 As to the meaning of 'land' see PARA 405 note 4 ante.

4 For the meaning of 'farm business tenancy' see PARA 420 note 7 ante.

5 Opencast Coal Act 1958 s 37, Sch 7 para 4A(1) (Sch 7 para 4A added by the Agricultural Tenancies Act 1995 s 40, Schedule para 20(7)). For the meaning of 'the period of occupation' see PARA 424 ante.

6 Opencast Coal Act 1958 Sch 7 para 4A(2) (as added: see note 5 supra). The Agricultural Tenancies Act 1995 s 28(3) applies in relation to a notice under the Opencast Coal Act 1958 Sch 7 para 4A(2) (as added) as it applies in relation to a notice under the Agricultural Tenancies Act 1995 s 28(2) (see AGRICULTURAL LAND vol 1 (2008) PARA 320): Opencast Coal Act 1958 Sch 7 para 4A(2) (as so added).

7 Ibid Sch 7 para 4A(3) (as added: see note 5 supra). The provisions of Sch 7 para 4A (as added) do not affect any right of the landlord or the tenant, or the jurisdiction of the arbitrator, under the Agricultural Tenancies Act 1995 Pt II (ss 9-14) (see AGRICULTURAL LAND vol 1 (2008) PARAS 306-309); but where there is a reference by virtue of the Opencast Coal Act 1958 Sch 7 para 4A (as added) and a reference under the Agricultural Tenancies Act 1995 Pt II in respect of the same tenancy, and it appears to the arbitrator that the reference under Pt II relates wholly or mainly to the consequences of the occupation or use of the land in the exercise of rights conferred by the order, he may direct that proceedings on the two references are to be taken concurrently: Opencast Coal Act 1958 Sch 7 para 4A(4) (as so added).

8 As to the meaning of 'mortgage' see PARA 430 note 6 ante.

9 The provisions of the Opencast Coal Act 1958 Sch 7 para 4A (as added) apply in relation to mortgages of land comprised in farm business tenancies as they apply in relation to such tenancies, as if any reference in Sch 7 para 4A (as added) to such a tenancy were a reference to such a mortgage, and any reference to a landlord

or to a tenant were a reference to a mortgagee or to a mortgagor, as the case may be: Sch 7 para 7A (added by the Agricultural Tenancies Act 1995 Schedule para 20(11)).

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C. NON-AGRICULTURAL LAND ADJUSTMENTS

446. Compensation for improvements.

Where (1) the land comprised in a compulsory rights order¹ consists of or includes land which immediately before the date of entry² constituted or formed part of a holding to which the provisions of the Landlord and Tenant Act 1927 relating to compensation for improvements and goodwill on the termination of business tenancies³ apply⁴, and on which before that date improvements qualifying for compensation⁵ had been carried out⁶; and (2) the tenancy⁷ under which the tenant could have claimed compensation for the improvements⁸ terminates on or after the date of entry but before the end of the period of occupation⁹, those provisions as to compensation for improvements apply, in relation to that tenancy, as if at its termination¹⁰ the land in question were in the state in which it was immediately before the date of entry¹¹. If the tenant quitted the holding before the termination of his tenancy, those provisions apply as if he had quitted the holding on its termination¹².

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante. As to the meaning of 'land' see PARA 405 note 4 ante.

2 For the meaning of 'the date of entry' see PARAS 424 note 1, 434 note 2 ante.

3 Ie the Landlord and Tenant Act 1927 Pt I (ss 1-17) (as amended): see LANDLORD AND TENANT.

4 Opencast Coal Act 1958 ss 30(1)(a), 37, Sch 7 para 8(1)(a).

5 See the Landlord and Tenant Act 1927 s 1 (as amended); s 2; and LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 792.

6 Opencast Coal Act 1958 s 30(1)(b), Sch 7 para 8(1)(a).

7 For the meaning of 'tenancy' see PARA 435 note 3 ante.

8 In the Opencast Coal Act 1958 Sch 7 Pt II (as amended), 'improvement' includes the erection of a building: Sch 7 para 8(4).

9 Ibid Sch 7 para 8(1)(b). For the meaning of 'the period of occupation' see PARA 424 ante.

10 'Termination', in relation to a tenancy, means the cesser of the tenancy, whether by effluxion of time or for any other reasons: ibid s 51(1).

11 Ibid Sch 7 para 8(2)(a).

12 Ibid Sch 7 para 8(2)(b). For these purposes, s 30(5) (see PARA 481 note 11 post) applies with the substitution, for references to s 30(2), of references to Sch 7 para 8(2): Sch 7 para 8(3).

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447. Position where the land has been restored.

Where land¹ comprised in a holding to which the provisions of the Landlord and Tenant Act 1927 relating to compensation for improvements and goodwill on the termination of business tenancies² apply is comprised in a compulsory rights order³, whether any other land is comprised in the holding, or comprised in the order, or not, and (1) the tenancy⁴ under which that holding was held immediately before the operative date⁵ continues until after the end of the period of occupation⁶; (2) before the operative date improvements⁷ had been carried out on the land in question⁸; and (3) at the end of the period of occupation the circumstances are such that compensation⁹ would be payable in respect of those improvements but for the fact that their benefit has been replaced, on the restoration¹⁰ of the land, by works of comparable benefit to the land¹¹, those provisions as to compensation for improvements apply to those works as if they had been carried out by the person who carried out the previous improvements¹².

1 As to the meaning of 'land' see PARA 405 note 4 ante.

2 I.e the Landlord and Tenant Act 1927 Pt I (ss 1-17) (as amended): see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 788 et seq.

3 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

4 For the meaning of 'tenancy' see PARA 435 note 3 ante.

5 For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

6 Opencast Coal Act 1958 s 37, Sch 7 para 9(1)(a). For the meaning of 'the period of occupation' see PARA 424 ante.

7 As to the meaning of 'improvements' see PARA 446 note 8 ante.

8 Opencast Coal Act 1958 Sch 7 para 9(1)(b).

9 I.e under ibid s 30: see PARA 481 post.

10 As to the meaning of 'restoration' see PARA 415 note 9 ante.

11 Opencast Coal Act 1958 Sch 7 para 9(1)(c).

12 Ibid Sch 7 para 9(2).

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448. Variation of terms of tenancy or mortgage.

Where, immediately before the operative date¹ of a compulsory rights order², any of the land³ comprised in the order was subject to a tenancy⁴, but was not comprised in a tenancy in relation to which the Agricultural Holdings Act 1986 applies or in a farm business tenancy⁵, and the tenancy continues until after the end of the period of occupation⁶, the landlord or the tenant of the holding may, by notice in writing served⁷ on his tenant or landlord, demand a reference to the court⁸ of the question whether any of the terms and conditions of the contract of tenancy, including any term or condition as to rent, should be varied in consequence of any change in the state of the holding resulting from the occupation or use of the land in the exercise of rights conferred by the compulsory rights order⁹.

On such a reference the court must determine what variations, if any, should be made, and the date, which must not be earlier than the end of the period of occupation, from which they are to take effect or to be treated as having taken effect; and as from that date the contract of tenancy has effect, or is to be treated as having had effect, subject to those variations¹⁰.

These provisions as to the variation of terms of tenancies¹¹ apply with necessary modifications to mortgages¹².

1 For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

2 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

3 As to the meaning of 'land' see PARA 405 note 4 ante.

4 For the meaning of 'tenancy' see PARA 435 note 3 ante.

5 Opencast Coal Act 1958 s 37, Sch 7 para 12(1)(a) (amended by the Agricultural Tenancies Act 1995 s 40, Schedule para 20(12)). For the meaning of 'farm business tenancy' see PARA 420 note 7 ante.

6 Opencast Coal Act 1958 Sch 7 para 12(1)(b). For the meaning of 'the period of occupation' see PARA 424 ante.

7 As to the service of notices see PARA 413 ante.

8 'The court' means the court exercising the jurisdiction conferred on the tribunal by the Landlord and Tenant Act 1927 Pt I (ss 1-17) (as amended), in accordance with the Landlord and Tenant Act 1954 s 63 (as amended) (see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 1197), the provisions of which apply to references under the Opencast Coal Act 1958 Sch 7 para 12 (as amended): Sch 7 para 12(4).

9 Ibid Sch 7 para 12(2).

10 Ibid Sch 7 para 12(3).

11 Ie ibid Sch 7 para 12 (as amended): see Sch 7 para 13 (as amended: see note 12 infra).

12 The provisions of ibid Sch 7 para 12 (as amended) apply in relation to mortgages as they apply in relation to contracts of tenancy, as if any reference to such a contract, or to a tenancy, other than a reference to a tenancy in relation to which the Agricultural Holdings Act 1986 applies or a farm business tenancy, were a reference to a mortgage, and any reference to a landlord or to a tenant were a reference to a mortgagee or to a mortgagor, as the case may be: Opencast Coal Act 1958 Sch 7 para 13 (amended by the Agricultural Tenancies Act 1995 Schedule para 20(13)). As to the meaning of 'mortgage' see PARA 430 note 6 ante.

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D. MINING LEASES

449. Restrictions on rent and royalties.

Where the land comprised in a compulsory rights order¹ consists of or includes land which, immediately before the operative date² of the order, was subject to a mining lease³ or order conferring working rights⁴ the benefit of which is held for the purposes of a mineral undertaking, the provisions of the lease or order are modified as follows⁵. The provisions of the lease or order have effect subject to the limitation that the aggregate amount of the rent, royalties and other sums payable by the mineral operator⁶ by virtue of the lease or order for any year⁷ which is either the year beginning with the operative date of the compulsory rights order⁸, or a year beginning with the anniversary of that date and falling within the period of occupation⁹, must not exceed the aggregate amount of the rent, royalties and other sums that would have been payable by the mineral operator under the lease or order for that year if the compulsory rights order had not been made, and he had exercised the relevant rights and facilities¹⁰ in the manner in which, and to the extent to which, he might reasonably have been expected to exercise them in those circumstances¹¹.

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante. As to the meaning of 'land' see PARA 405 note 4 ante.

2 For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

3 For the meaning of 'mining lease' see PARA 430 note 6 ante. As to mining leases generally see PARA 321 et seq ante.

4 For the meaning of 'order conferring working rights' see PARA 430 note 7 ante. As to such orders generally see PARA 383 et seq ante.

5 Opencast Coal Act 1958 s 37, Sch 7 para 17(1). 'Mineral undertaking' means an undertaking for the working and getting of minerals, whether by underground or surface working: s 51(1). As to the meaning of 'minerals' see PARA 12 note 22 ante.

6 For these purposes, 'mineral operator' means: (1) in relation to land which, immediately before the operative date of the order in question, is subject to a mining lease or order conferring working rights held for the purpose of a mineral undertaking, the person for the time being entitled to the benefit of that lease or order (ibid s 33(1)(a), (2), Sch 5 para 1(2)(a), Sch 7 para 17(2)); and (2) in relation to land which, immediately before that date, is land in which the interest of the owner of the land or of any stratum of it (whether on or below the surface) is held for the purposes of such an undertaking, the person for the time being entitled to that interest (s 33(1)(b), Sch 5 para 1(2)(b), Sch 7 para 17(2)).

7 'Year' means any period of 12 months: ibid s 51(1).

8 Ibid Sch 7 para 18(a).

9 Ibid Sch 7 para 18(b). For the meaning of 'the period of occupation' see PARA 424 ante.

10 For these purposes, 'the relevant rights and facilities', in relation to a mineral undertaking, means all rights and facilities for the time being available to the person carrying it on for the purpose of working, getting, carrying away, using, treating, converting and disposing of minerals, whether on land comprised in the compulsory rights order in question or elsewhere: ibid Sch 5 para 1(3), Sch 7 para 17(2). As to references to working minerals on land see PARA 407 note 5 ante.

11 Ibid Sch 7 para 18.

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E. BUSINESS TENANCIES

450. Application of the Landlord and Tenant Act 1954.

Where any of the land comprised in a compulsory rights order¹ is land which, immediately before the operative date² of the order, was subject to a tenancy³ to which the provisions of the Landlord and Tenant Act 1954 relating to business tenancies⁴ apply⁵, then, as from that date and so long thereafter as the tenancy continues and the order continues to have effect, so much of that land as is comprised in the tenancy⁶ and immediately before that date was occupied by the tenant for the purposes of the relevant business⁷, or for those and other purposes, or was occupied by a person employed by the tenant for those purposes⁸, is to be treated for the purposes of those provisions as if it were so occupied⁹ even if for the time being it is not¹⁰.

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante. As to the meaning of 'land' see PARA 405 note 4 ante.

2 For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

3 For the meaning of 'tenancy' see PARA 435 note 3 ante.

4 Ie the Landlord and Tenant Act 1954 Pt II (ss 23-46) (as amended): see LANDLORD AND TENANT.

5 Opencast Coal Act 1958 s 37, Sch 7 para 19(1).

6 Ibid Sch 7 para 20(1)(a).

7 'The relevant business' means the business by reason of which, immediately before the operative date, the tenancy was one to which the Landlord and Tenant Act 1954 Pt II (as amended) applied: Opencast Coal Act 1958 Sch 7 para 20(2). 'Business' includes a trade, profession and employment, and any activity carried on by a body of persons, whether corporate or unincorporate: Landlord and Tenant Act 1954 s 23(2); applied by the Opencast Coal Act 1958 Sch 7 para 19(2).

8 Ibid Sch 7 para 20(1)(b).

9 Ibid Sch 7 para 20(1). For further adjustments relating to business tenancies see Sch 7 paras 21-24 (as amended); and LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARAS 777-779.

10 Ibid Sch 7 para 20(1)(c).

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F. ALLOTMENTS

451. Termination of allotment tenancy.

Where the land comprised in a compulsory rights order¹ consists of or includes any land which, immediately before the operative date² of the order, was occupied, with or without other land, under an allotment tenancy³, that tenancy, if not previously terminated, terminated on the date of entry⁴.

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante. As to the meaning of 'land' see PARA 405 note 4 ante.

2 For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

3 'Allotment tenancy' means a tenancy under which land is occupied by the tenant and is either land let under that tenancy for use by the tenant as an allotment garden, or an allotment other than an allotment garden: Opencast Coal Act 1958 s 41(1), Sch 8 para 1(1). 'Allotment' has the meaning assigned to it by the Allotments Act 1922 s 3(7) (as amended), and 'allotment garden' has the meaning assigned to it by s 22(1) (see AGRICULTURAL LAND vol 1 (2008) PARA 510): Opencast Coal Act 1958 s 41(2). Land used by a tenant as an allotment garden is presumed to have been let for such use by him: Allotments Act 1922 s 22(4); applied by the Opencast Coal Act 1958 Sch 8 para 1(2).

4 Ibid Sch 8 para 2. For the meaning of 'the date of entry' see PARAS 424 note 1, 434 note 2 ante. As to compensation see PARAS 491-493 post.

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(4) COMPENSATION FOR COMPULSORY RIGHTS ORDERS

(i) In general

452. Types of compensation payable.

The Opencast Coal Act 1958 contains elaborate provisions with regard to the compensation payable in respect of the occupation and use of land pursuant to a compulsory rights order¹. No such compensation is payable by any person unless a claim for it is duly made to that person². A person entitled to the rights conferred by a compulsory rights order must, for the purpose of facilitating the assessment of compensation, cause records to be made of the condition of the land in question³. These compensation provisions⁴ relate to compensation in respect of minerals⁵, agricultural land⁶, non-agricultural land⁷, easements and rights⁸, and depreciation⁹. Provision is also made for certain special cases¹⁰.

1 See the Opencast Coal Act 1958 Pt II (ss 17-36) (as amended). As to compulsory rights orders see s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

2 See ibid s 40(1) (as amended); and PARA 500 post.

3 See ibid s 36(1) (as amended); and PARA 453 post.

4 See PARA 453 et seq post.

5 See PARA 455 et seq post.

6 See PARA 463 et seq post.

7 See PARAS 479-481 post.

8 See PARA 482 et seq post.

9 See PARAS 485-487 post.

10 I.e compensation in respect of concurrent and limited compulsory rights orders (see PARAS 488-489 post), compensation in respect of woodlands (see PARA 490 post), allotments (see PARAS 491-493 post), restricted lettings, easements and similar rights (see PARA 494 post), and the apportionment of compensation (see PARA 495 et seq post).

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453. Records.

In the case of any compulsory rights order¹, where any person duly published, served and affixed notices², he also had to cause a record³ to be made of the condition⁴ of all the land comprised in the order⁵, and, except in the case of a limited compulsory rights order⁶, of any other land forming, in relation to that order, part of a holding⁷.

In the case of any compulsory rights order other than a limited order, the person entitled immediately before the end of the period of occupation⁸ to the rights conferred by the order must, at the end of that period, cause a record to be made of the condition, as at the end of that period, of all the land comprised in the order⁹.

Any record of the condition of land made under these provisions must be made in pursuance of a comprehensive survey of the land, in so far as such a survey can be carried out by inspection and without any operations involving the excavation of land or the making of borings, and must include all such particulars of the land and of things in or on it as are reasonably required for recording the results of such a survey¹⁰.

If any person fails to cause any record to be made or served in accordance with any requirement imposed on him¹¹: (1) his obligation to comply with that requirement is enforceable by the Coal Authority¹² as if it were a duty owed by that person to that Authority; and (2) without prejudice to its rights by virtue of head (1) above, that Authority may itself cause the record to be made and served in accordance with that requirement and may recover any expenses reasonably incurred in doing so from the person in contravention of that requirement¹³.

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

2 Ie under ibid s 5(2) (as amended): see PARA 434 ante.

3 For the purpose of facilitating the assessment of compensation under ibid Pt II (ss 17-36) (as amended), a person entitled to the rights conferred by a compulsory rights order is to cause records to be made in accordance with the provisions of s 36 (as amended): s 36(1) (amended by the Coal Industry Act 1994 s 52(2), Sch 8 paras 1, 27(1)).

4 Ie the condition as on the date of entry. For the meaning of 'the date of entry' see PARAS 424 note 1, 434 note 2 ante. For the purposes of any provision of the Opencast Coal Act 1958, in so far as it relates to the state or condition in which land was at a time specified in that provision, regard must be had to all matters relevant to that state or condition at that time, including, without prejudice to the generality of the foregoing, the characteristics of the soil, whether on or below the surface, the presence of any minerals in or under the land, the growth of trees, hedges or other vegetation, and any buildings, structures, apparatus or other works which were on, in, under or over the land at that time; and any reference in any provision of the Act to the state or condition in which land would have been, or might reasonably have been expected to be, in circumstances specified in that provision is to be construed accordingly: s 51(4). As to the meaning of 'land' see PARA 405 note 4 ante.

5 Ibid s 36(2)(a) (amended by the Coal Industry Act 1975 ss 4(2), 7(4), Sch 3 para 7, Sch 5; and the Coal Industry Act 1994 Sch 8 para 27(2)).

6 Opencast Coal Act 1958 s 36(2) proviso (amended by the Coal Industry Act 1975 Sch 3 para 7, Sch 5). As to limited orders see PARA 430 ante.

7 Opencast Coal Act 1958 s 36(2)(b) (amended by the Coal Industry Act 1975 Sch 3 para 7, Sch 5; and the Coal Industry Act 1994 Sch 8 para 27(2)). A holding for this purpose is one to which the Opencast Coal Act 1958 s 17 (as amended) or s 29 (as amended) applies: see s 36(2)(b) (as so amended); and PARAS 463-464, 479 post.

8 For the meaning of 'the period of occupation' see PARA 424 ante.

9 Opencast Coal Act 1958 s 36(3) (amended by the Coal Industry Act 1994 Sch 8 para 27).

10 Opencast Coal Act 1958 s 36(4). With respect to professional and other fees incurred by persons in obtaining advice or conducting negotiations with regard to any record made under s 36 (as amended), the Secretary of State may make regulations requiring persons required to make such records, within such limits (whether as to descriptions of fees, or as to amount, or otherwise) and subject to such conditions as may be prescribed, to pay fees so incurred: s 36(9) (amended by the Coal Industry Act 1994 Sch 8 para 27); and see the Opencast Coal (Fees) Regulations 1960, SI 1960/194 (as amended). This provision applies provided that no regulations under the Opencast Coal Act 1958 s 36 (as amended) apply to any fees in so far as they form part of the costs of an arbitration under s 36 (as amended) or affect any power of an arbitrator with respect to any such costs: s 36(9) proviso. As to regulation-making powers generally see PARA 409 ante. As to the Secretary of State see PARA 4 ante.

11 le imposed by *ibid* s 36 (as amended): see s 36(9A) (as added: see note 13 *infra*).

12 As to the Coal Authority see PARA 52 *et seq* ante.

13 Opencast Coal Act 1958 s 36(9A) (added by the Coal Industry Act 1994 Sch 8 para 27(7)).

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454. Service of and objection to records.

Where any person has caused a record to be made¹ he must within a specified time² serve³, on every person who is then known to him to be a person directly concerned⁴, a notice in the prescribed form⁵ together with a copy of the record⁶.

If any such person so served gives notice⁷ of objection to the person who served the record, within 21 days after the date on which the copy was sent to him, requiring the record to be amended in one or more respects specified in the notice, then if all the persons whose agreement is requisite⁸ agree on an amendment of the record (whether the amendment is that specified in the notice of objection or another amendment in substitution for it), the person who served the record must cause the record to be amended accordingly⁹. If no such agreement is reached, and the objection is not withdrawn, the matter in dispute must be determined by arbitration¹⁰.

1 le under the Opencast Coal Act 1958 s 36 (as amended): see s 36(5) (as amended: see note 6 infra); and PARA 453 ante.

2 In the case of a record made under *ibid* s 36(2) (as amended) the time is 21 days after the date of entry (s 36(5)(a) (as amended: see note 6 infra)); in the case of a record made under s 36(3) (as amended) it is 21 days after the end of the period of occupation (s 36(5)(b) (as amended: see note 6 infra)). For the meaning of 'the date of entry' see PARAS 424 note 1, 434 note 2 ante; and for the meaning of 'the period of occupation' see PARA 424 ante.

3 As to the service of notices see PARA 413 ante.

4 For the meaning of 'person directly concerned' see PARA 422 note 14 ante.

5 Forms of notices are prescribed by the Opencast Coal (Notice of Record) Regulations 1958, SI 1958/2121, reg 3, Schedule.

6 Opencast Coal Act 1958 s 36(5) (amended by the Coal Industry Act 1994 Sch 8 paras 1, 27).

7 As to the giving of notices see PARA 413 ante.

8 le the person who served the record, the person who gave the notice of objection and all other persons to whom copies of the record were sent under the Opencast Coal Act 1958 s 36 (as amended): s 36(7) (amended by the Coal Industry Act 1994 Sch 8 paras 1, 27).

9 Opencast Coal Act 1958 s 36(6)(a) (amended by the Coal Industry Act 1994 Sch 8 para 27).

10 Opencast Coal Act 1958 s 36(6)(b). The reference is to a single arbitrator appointed by the person who served the record and the person who gave the notice of objection in consequence of which the dispute arose (s 36(8)(a) (amended by the Coal Industry Act 1994 Sch 8 para 27)); and, except in relation to that appointment, the persons specified in note 8 supra are to be parties to the reference (Opencast Coal Act 1958 s 36(8)(b)). As to references to arbitration see ARBITRATION vol 2 (2008) PARA 1201 et seq.

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(ii) Compensation in respect of Minerals

455. In general.

Where the land comprised in a compulsory rights order¹ consists of or includes land which, immediately before the operative date² of the order, was subject to a mining lease³ or order conferring working rights⁴ the benefit of which is held for the purposes of a mineral undertaking⁵, or was land in which the interest of the owner⁶ of the land or of any stratum, whether on or below the surface, is held for the purposes of a mineral undertaking, the provisions of the Opencast Coal Act 1958 relating to compensation⁷ in respect of minerals⁸ have effect⁹.

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante. As to the meaning of 'land' see PARA 405 note 4 ante.

2 For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

3 For the meaning of 'mining lease' see PARA 430 note 6 ante.

4 For the meaning of 'order conferring working rights' see PARA 430 note 7 ante.

5 For the meaning of 'mineral undertaking' see PARA 449 note 5 ante.

6 For the meaning of 'owner' see PARA 412 note 4 ante.

7 The provisions referred to are those of the Opencast Coal Act 1958 Sch 5 (as amended) (see PARA 456 et seq post), which have effect in relation to land comprised in a compulsory rights order in the circumstances specified in the text; and any reference in Sch 5 (as amended) to land to which that Schedule applies is a reference to land which, immediately before the operative date of the order, fell within s 33(1)(a) or s 33(1)(b): Sch 5 para 1(1).

8 As to the meaning of 'minerals' see PARA 12 note 22 ante.

9 Opencast Coal Act 1958 s 33(1). The provisions of Pt II (ss 17-36) (as amended), other than s 33, have effect subject to the provisions of Sch 5 in cases falling within that Schedule: s 33(2).

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456. Annual compensation payable to mineral operator.

For the year¹ beginning with the operative date² of the compulsory rights order³, and for each subsequent year which begins with an anniversary of that date and falls within the period of occupation⁴, the following must be assessed:

- 198 (1) the profit or loss which a person carrying on the relevant undertaking⁵ might reasonably have been expected to make for that year by the exercise of the relevant rights and facilities⁶ if the order had not been made⁷; and
- 199 (2) the profit or loss which such a person might reasonably have been expected to make for that year by the exercise of those rights and facilities in the circumstances existing in that year⁸.

Where, in any one year, both those assessments show a profit, but the assessment under head (2) above shows a smaller profit than that under head (1), the mineral operator⁹ is entitled to compensation for that year of an amount equal to the difference¹⁰. Where the assessment under head (1) above shows a profit and that under head (2) above shows a loss, the amount of the loss is added to the amount of that profit, and the mineral operator is entitled to compensation for that year of an amount equal to the sum of those amounts¹¹. Where both assessments show a loss, but that under head (2) above shows a greater loss than that under head (1) above, the mineral operator is entitled to compensation for that year of an amount equal to the difference¹².

1 For the meaning of 'year' see PARA 449 note 7 ante.

2 For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

3 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

4 For the meaning of 'the period of occupation' see PARA 424 ante.

5 'Relevant undertaking' means the mineral undertaking of the mineral operator: Opencast Coal Act 1958 s 33(1), Sch 5 para 1(2). For the meaning of 'mineral undertaking' see PARA 449 note 5 ante; and for the meaning of 'mineral operator' see PARA 449 note 6 ante.

6 For the meaning of 'relevant rights and facilities' see PARA 449 note 10 ante. Any reference in ibid Sch 5 to the exercise of those rights and facilities in the manner in which they might reasonably have been expected to be exercised in circumstances there mentioned is to be construed as including a reference to the exercise of those rights and facilities to the extent to which they might reasonably have been expected to be exercised in those circumstances: Sch 5 para 1(4).

7 Ibid Sch 5 para 3(a).

8 Ibid Sch 5 para 3(b).

9 For the meaning of 'mineral operator' see PARA 449 note 6 ante.

10 Opencast Coal Act 1958 Sch 5 para 4(1). Any entitlement to compensation under Sch 5 (as amended) is an entitlement to compensation from, in the case of compensation under Sch 5 para 4 or Sch 5 para 12, the persons who, for the whole or any part of the year in question, have been entitled to the rights conferred by the order: Sch 5 para 2(1)(a) (Sch 5 para 2 substituted by the Coal Industry Act 1994 s 52(2), Sch 8 para 41). The Opencast Coal Act 1958 Sch 5 para 2(1)(a) (as substituted) has effect subject, where different persons have

been entitled to the rights conferred by an order for different parts of the year, to any apportionment under s 35(3): Sch 5 para 2(2) (as so substituted).

The provisions of Sch 6 paras 8, 9 have effect (with the necessary modifications) in relation to any compensation payable under Sch 5 para 4, and to any compensation received by virtue of Sch 5 para 5 or Sch 5 para 6 as those provisions have effect in relation to compensation to which a person is entitled by virtue of s 17, and to compensation received by virtue of s 26 or s 27 (both as amended): s 34, Sch 6 para 10.

Where a person is entitled to compensation for any year in respect of a holding by virtue of s 17 (as amended), then in so far as it is shown that reasonable opportunities were open to him (apart from the occupation and use of any part of the holding not comprised in the order) to mitigate any loss of profit from the holding by augmenting his income for that year in other ways, and those opportunities would not have been open to him if he had continued to be in occupation of the entirety of the holding, the amount of any profit assessed for that year under s 19(1) (repealed) is reduced by the amount by which he has augmented his income for that year by availing himself of those opportunities, or by which he might reasonably have been expected to augment his income for that year if he had availed himself of those opportunities, as the case may be: Sch 6 para 8(1). For the purposes of Sch 6 para 8 no account is taken of any opportunities of which the person in question has not availed himself (notwithstanding that they were opportunities of the kind described in Sch 6 para 8(1)) in so far as they would have involved his engaging (whether as an employed person or otherwise) in a substantially different occupation from that in which he was engaged during the period preceding the operative date of the order: Sch 6 para 8(2). Section 19(8)(a) (repealed), Sch 6 para 7 (repealed) apply for the purposes of Sch 6 para 8 as they apply for the purposes of s 19 (repealed): Sch 6 para 8(3).

Where a person is entitled to compensation for any year in respect of a holding by virtue of s 17 (as amended) and he has received any compensation by virtue of s 26 (as amended) in respect of any improvements carried out on land comprised in that holding, being improvements of a description specified in Sch 4 Pt I or Pt VI, or by virtue of s 27 (as amended) in respect of a forced sale of any property kept on or used for the purposes of that holding, or removed from that holding, as the case may be, the amount of any profit assessed for that year under s 19(1) (repealed) is reduced by the amount of the income from that compensation which is attributable to that year: Sch 6 para 9(1). For the purposes of Sch 6 para 9(1), the income from any compensation which is attributable to any year in a case where the compensation is shown to have been invested by the recipient thereof is taken to be the amount of income accruing in respect of that year from the property representing the compensation and, in any other case, is taken to be an amount equal to the income which would have accrued for that year from property representing the compensation if it had been invested in securities bearing interest at the rate for the time being in force for the purposes of s 35: Sch 6 para 9(2). In Sch 6 para 9 any reference to Sch 4 Pt I or Pt VI includes a reference to that Part as varied by any order made under s 26 or s 28 (both as amended): Sch 6 para 9(3). In Sch 6 paras 8, 9, references to s 17 (as amended); s 19 (repealed); and s 27 (as amended) include references to the provisions of those sections as applied by s 29 (as amended): Sch 6 para 11 (amended by virtue of the Coal Industry Act 1994 s 67(8), Sch 11 Pt III).

By the Coal Industry Act 1994 s 52(2), Sch 8 paras 1, 42(3), (6), the Opencast Coal Act 1958 Sch 6 paras 8, 9 (other than as applied by Sch 6 para 10 to compensation under Sch 5 (as amended)) ceased to have effect on the restructuring date (ie 31 October 1994: see PARA 3 note 9 ante), except in relation to any compulsory rights order confirmed before that date: see the Coal Industry Act 1994 Sch 8 paras 1, 42(3), (6).

In the Opencast Coal Act 1958 Sch 6 paras 8-31 (as amended) any reference to a holding, in relation to any provisions of Pt II (ss 17-36) (as amended), includes a reference to land which, in accordance with any of Sch 6 paras 1-5 (as amended) is to be treated as if it were a separate holding for the purposes of those provisions: Sch 6 para 6.

11 Ibid Sch 5 para 4(2). See also note 10 supra.

12 Ibid Sch 5 para 4(3). See also note 10 supra.

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457. Initial compensation payable to mineral operator.

For the year¹ beginning with the operative date² of the compulsory rights order³, the mineral operator⁴, in addition to any annual compensation⁵, was entitled to compensation of an amount equal to the amount of any expenses⁶ reasonably incurred by him which were directly attributable to his being required to vacate land comprised in the order⁷.

If, in consequence of the confirmation⁸ of the compulsory rights order, the mineral operator incurs a loss in respect of a forced sale of any livestock, vehicles, plant, equipment or other chattels kept on land comprised in the order, or used on any such land for the purposes of the relevant undertaking⁹, the mineral operator is entitled, subject to his having given the person potentially liable the required notice and afforded him facilities for inspection¹⁰, to compensation of an amount equal to that loss¹¹.

1 For the meaning of 'year' see PARA 449 note 7 ante.

2 For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

3 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

4 For the meaning of 'mineral operator' see PARA 449 note 6 ante.

5 As to annual compensation see PARA 456 ante.

6 These expenses included any expenses reasonably incurred by the mineral operator in procuring the cancellation or modification of a contract in force immediately before the operative date, in so far as it was (1) a contract for the supply of goods or the rendering of services which would have been required by him for the purposes of the relevant undertaking (for the meaning of which see PARA 456 note 5 ante) if the order had not been made, but in consequence of the order are not required for those purposes (Opencast Coal Act 1958 s 33(1), Sch 5 para 5(2)(a)); or (2) a contract for the supply by him of minerals (as to the meaning of which see PARA 12 note 22 ante) or other goods which but for the order would have been supplied by him, directly or indirectly, by means of operations on land comprised in the order, and, in consequence of the order, cannot be so supplied (Sch 5 para 5(2)(b)). As to the distinction between a contract for services and a contract of service see generally EMPLOYMENT vol 39 (2009) PARA 1 et seq.

7 Ibid Sch 5 para 5(1). As to compensation see PARA 456 note 10 ante. As to the meaning of 'land' see PARA 405 note 4 ante.

8 See PARA 433 ante.

9 For the meaning of 'relevant undertaking' see PARA 456 note 5 ante.

10 A person was not entitled to such compensation in respect of a forced sale unless he had given to the person potentially liable not less than ten days' notice of the intended sale, and had, before the sale, afforded to the person to whom the notice was given, or any person designated for the purpose by him, reasonable facilities to inspect the property intended to be sold, in so far as he was in a position to afford such facilities: Opencast Coal Act 1958 s 27(3) (amended by the Coal Industry Act 1994 s 52(2), Sch 8 para 21(3)), applied by the Opencast Coal Act 1958 Sch 5 para 6(2). See PARA 478 post.

11 Ibid Sch 5 para 6(1). As to compensation see PARA 456 note 10 ante. Any entitlement to compensation under Sch 5 (as amended) is an entitlement to compensation from, in the case of compensation under Sch 5 para 5, the person on whose application that order is made (Sch 5 para 2(1)(b) (Sch 5 para 2 substituted by the Coal Industry Act 1994 Sch 8 para 41)); in the case of compensation under the Opencast Coal Act 1958 Sch 5 para 6, the person by whom the compensation would be payable if it were compensation under s 27 (as amended) (Sch 5 para 2(1)(c) (as so substituted)).

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458. Terminal compensation payable to mineral operator.

Where land¹ which attracts the operation of the provisions of the Opencast Coal Act 1958 relating to compensation in respect of minerals² continues after the end of the period of occupation³ to be subject to a mining lease⁴ or order conferring working rights⁵ or to be held by the owner⁶ for the purposes of a mineral undertaking⁷, then for each year after the period of occupation⁸ the following must be assessed:

- 200 (1) the current value, as at the end of the period of occupation, of the expectation of making a profit for that year assessed with regard to the effect of the compulsory rights order⁹; and
- 201 (2) the current value, as at the end of that period, of the expectation of making a profit for that year assessed as if the compulsory rights order had not been made¹⁰.

If the aggregate of the values assessed under head (1) above is less than the aggregate of the values assessed under head (2) above, the mineral operator¹¹ is entitled to compensation of an amount equal to the difference¹².

1 As to the meaning of 'land' see PARA 405 note 4 ante.

2 I.e. the provisions of the Opencast Coal Act 1958 s 33(1), Sch 5 (as amended): see Sch 5 para 7(1). As to the meaning of 'minerals' see PARA 12 note 22 ante.

3 For the meaning of 'the period of occupation' see PARA 424 ante.

4 For the meaning of 'mining lease' see PARA 430 note 6 ante.

5 For the meaning of 'order conferring working rights' see PARA 430 note 7 ante.

6 For the meaning of 'owner' see PARA 412 note 4 ante.

7 I.e. continues to be land falling within the Opencast Coal Act 1958 s 33(1)(a) or s 33(1)(b) (see PARA 455 ante): s 33(1), Sch 5 para 7(1). For the meaning of 'mineral undertaking' see PARA 449 note 5 ante.

8 'Year after the period of occupation' means a year (for the meaning of which see PARA 449 note 7 ante) which is either the year beginning with the end of the period of occupation or a year beginning with the anniversary of the end of that period: *ibid* Sch 5 para 7(4).

9 *Ibid* Sch 5 para 8(1)(a). The profit to be assessed is that which a person carrying on the relevant undertaking might reasonably be expected to make by the exercise of the relevant rights and facilities (see PARA 449 note 10 ante) as they subsist at the end of the period of occupation, and in the circumstances existing at the end of that period, on the assumption that, during that period, he had exercised them, so far as was reasonably practicable (see HEALTH AND SAFETY AT WORK), having regard to the effect of the compulsory rights order, in such manner as in the circumstances he might reasonably have been expected to exercise them (see PARA 456 note 6 ante): Sch 5 para 7(3). For the meaning of 'relevant undertaking' see PARA 456 note 5 ante. As to compulsory rights orders see s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

10 *Ibid* Sch 5 para 8(1)(b). The profit to be assessed is that which a person carrying on the relevant undertaking might reasonably have been expected to make by the exercise of the relevant rights and facilities as they might reasonably have been expected to subsist at the end of the period of occupation, and in the circumstances which might reasonably have been expected to exist at the end of that period, if (1) the compulsory rights order had not been made (Sch 5 para 7(2)(a)); and (2) during the period of occupation, the person carrying on the relevant undertaking had exercised the relevant rights and facilities in the manner in

which, had that order not been made, he might reasonably have been expected to exercise them (Sch 5 para 7(2)(b)).

11 For the meaning of 'mineral operator' see PARA 449 note 6 ante.

12 Opencast Coal Act 1958 Sch 5 para 8(2). Any entitlement to compensation under Sch 5 (as amended) is an entitlement to compensation from, in the case of compensation under Sch 5 para 7, 8, 9, 10 or 13, the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order: Sch 5 para 2(1)(d) (Sch 5 para 2 substituted by the Coal Industry Act 1994 s 52(2), Sch 8 para 41).

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459. Terminal compensation where mining lease has minimum rent provision.

Where land¹ which attracts the operation of the provisions of the Opencast Coal Act 1958 relating to compensation in respect of minerals² continues after the end of the period of occupation³ to be subject to a mining lease⁴ or an order conferring working rights⁵ the benefit of which is held for the purposes of a mineral undertaking⁶, and the lease or order contains a provision as to minimum rent⁷, the following must be assessed:

- 202 (1) the capital equivalent⁸, as at the end of that period, of the aggregate minimum rent liabilities⁹ assessed with regard to the effect of the compulsory rights order¹⁰; and
- 203 (2) the capital equivalent, as at the end of that period, of those liabilities assessed as if that order had not been made¹¹.

If the capital equivalent under head (1) above is greater than that under head (2) above, the mineral operator is entitled to compensation of an amount equal to the difference¹².

1 As to the meaning of 'land' see PARA 405 note 4 ante.

2 I.e. the provisions of the Opencast Coal Act 1958 s 33(1), Sch 5: see Sch 5 paras 1(1), 9(1), (5). As to the meaning of 'minerals' see PARA 12 note 22 ante.

3 For the meaning of 'the period of occupation' see PARA 424 ante.

4 For the meaning of 'mining lease' see PARA 430 note 6 ante.

5 For the meaning of 'order conferring working rights' see PARA 430 note 7 ante.

6 For the meaning of 'mineral undertaking' see PARA 449 note 5 ante.

7 Opencast Coal Act 1958 Sch 5 paras 1(1), 9(1), (5). In this context 'rent' includes yearly or other rent, and any toll, duty, royalty or other annual or periodical payment in the nature of rent, whether payable in money or money's worth or otherwise: Sch 5 para 9(6).

8 The capital equivalent of the aggregate minimum rent liabilities for any year is to be taken to be the amount of a fund which, if set aside for the purpose at the end of the period of occupation, would afford a sufficient, but not more than sufficient, indemnity against those liabilities as so assessed: *ibid* Sch 5 para 10(3). For the meaning of 'year' see PARA 449 note 7 ante.

9 Any reference to a minimum rent liability for any year is a reference to the difference between the rent payable for that year under the lease or order and the rent which would have been so payable if there had been no provision as to minimum rent: *ibid* Sch 5 para 9(4), (5).

10 *Ibid* Sch 5 para 10(1)(a). For each year after the period of occupation there must be assessed, in the circumstances existing at the end of that period, the minimum rent liability, if any, which the mineral operator might reasonably be expected to incur under that mining lease or order, on the assumption that, during that period, he had exercised the relevant rights and facilities, so far as was reasonably practicable, having regard to the effect of the compulsory rights order, in such manner as in the circumstances he might have reasonably been expected to exercise them: Sch 5 para 9(3), (5). See also PARA 456 note 6 ante. For the meaning of 'year after the period of occupation' see PARA 458 note 8 ante; for the meaning of 'relevant rights and facilities' see PARA 449 note 10 ante; and for the meaning of 'mineral operator' see PARA 449 note 6 ante. As to compulsory rights orders see s 4 (as amended); and PARA 422 *et seq* ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

11 Ibid Sch 5 para 10(1)(b). For each year after the period of occupation there must be assessed the minimum rent liability, if any, that the mineral operator might reasonably have been expected to incur under that mining lease or order if (1) the compulsory rights order had not been made (Sch 5 para 9(2)(a)); and (2) during the period of occupation he had exercised the relevant rights and facilities in the manner in which, had that order not been made, he might reasonably have been expected to exercise them (Sch 5 para 9(2)(b)).

12 Ibid Sch 5 para 10(2). Any entitlement to compensation under Sch 5 (as amended) is an entitlement to compensation from, in the case of compensation under Sch 5 paras 7, 8, 9, 10 or 13, the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order: Sch 5 para 2(1)(d) (Sch 5 para 2 substituted by the Coal Industry Act 1994 s 52(2), Sch 8 para 41).

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460. Annual compensation payable to owner other than mineral operator.

Where there is land¹ which attracts the operation of the provisions of the Opencast Coal Act 1958 relating to compensation in respect of minerals², and the interest³ of the owner⁴ of that land, or a stratum of it, is held by a person other than the mineral operator⁵, there must be assessed for the year⁶ beginning with the operative date⁷ of the compulsory rights order⁸, and for each subsequent year, the aggregate amount of the rent, royalties and other sums to which the owner⁹ might reasonably have been expected to be entitled for that year in respect of that interest, and in respect of any interest of his in any other relevant land¹⁰: (1) if the compulsory rights order had not been made¹¹; and (2) having regard to that order¹².

For any year in which the assessment under head (2) above is less than that under head (1) above, the owner of the separate interest¹³ is entitled to compensation of an amount equal to the difference¹⁴.

1 As to the meaning of 'land' see PARA 405 note 4 ante.

2 I.e. the provisions of the Opencast Coal Act 1958 s 33(1), Sch 5: see Sch 5 para 11(1).

3 This interest is referred to in *ibid* Sch 5 paras 12, 13 as 'the separate interest': see Sch 5 para 11(2). Any reference in those paragraphs to the owner of the separate interest is a reference to the person for the time being entitled to that interest: Sch 5 para 11(2).

4 For the meaning of 'owner' see PARA 412 note 4 ante.

5 Opencast Coal Act 1958 Sch 5 para 11(1). For the meaning of 'mineral operator' see PARA 449 note 6 ante.

6 For the meaning of 'year' see PARA 449 note 7 ante.

7 For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

8 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 *et seq* ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

9 I.e. the owner of the separate interest: see note 3 *supra*.

10 'Other relevant land' means land, other than the land in which the separate interest subsists, which is land in which the mineral operator has an interest held for the purposes of the relevant undertaking: Opencast Coal Act 1958 Sch 5 para 12(4). For the meaning of 'relevant undertaking' see PARA 456 note 5 ante.

11 *Ibid* Sch 5 para 12(1)(a). The assessment must be made as if the person carrying on the relevant undertaking had exercised the relevant rights and facilities in the manner in which, in those circumstances, he might reasonably have been expected to exercise them: Sch 5 para 12(1)(b). See also PARA 456 note 6 ante. For the meaning of 'relevant rights and facilities' see PARA 449 note 10 ante.

12 *Ibid* Sch 5 para 12(2). The assessment must be made on the assumption that the person carrying on the relevant undertaking exercised the relevant rights and facilities during that year, so far as was reasonably practicable, having regard to the effect of the compulsory rights order, in such manner as in those circumstances he might reasonably have been expected to exercise them: Sch 5 para 12(2).

13 See note 3 *supra*.

14 Opencast Coal Act 1958 Sch 5 para 12(3). Any entitlement to compensation under Sch 5 (as amended) is an entitlement to compensation from, in the case of compensation under Sch 5 para 4 or Sch 5 para 12, the persons who, for the whole or any part of the year in question, have been entitled to the rights conferred by the

order: Sch 5 para 2(1)(a) (Sch 5 para 2 substituted by the Coal Industry Act 1994 s 52(2), Sch 8 para 41). The Opencast Coal Act 1958 Sch 5 para 2(1)(a) (as substituted) has effect subject, where different persons have been entitled to the rights conferred by an order for different parts of the year, to any apportionment under s 35(3): Sch 5 para 2(2) (as so substituted).

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461. Terminal compensation payable to owner other than mineral operator.

There must be assessed the market value which, at the end of the period of occupation¹, the separate interest² might reasonably have been expected to have: (1) if the compulsory rights order had not been made³; and (2) in the circumstances existing at the end of the period of occupation having regard to that order⁴.

If the value under head (2) above is less than that under head (1) above the owner of the separate interest is entitled to compensation of an amount equal to the difference⁵.

1 For the meaning of 'the period of occupation' see PARA 424 ante.

2 As to the separate interest see PARA 460 note 3 ante.

3 Opencast Coal Act 1958 s 33(1), Sch 5 para 13(1)(a). This assessment must be made on the same assumptions as are stated in PARA 460 note 11 ante: Sch 5 para 13(1)(b). As to compulsory rights orders see s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

4 Ibid Sch 5 para 13(2). This assessment must be made on the assumption that during the period of occupation the person carrying on the relevant undertaking exercised the relevant rights and facilities as stated in PARA 460 note 12 ante: Sch 5 para 13(2). For the meaning of 'relevant rights and facilities' see PARA 449 note 10 ante.

5 Ibid Sch 5 para 13(3). Any entitlement to compensation under Sch 5 (as amended) is an entitlement to compensation from, in the case of compensation under Sch 5 paras 7, 8, 9, 10 or 13, the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order: Sch 5 para 2(1)(d) (Sch 5 para 2 substituted by the Coal Industry Act 1994 s 52(2), Sch 8 para 41).

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462. Compensation in respect of disposable minerals.

Where the operator exercises any right of his by virtue of a compulsory rights order¹ to get any minerals² other than coal³; and the land⁴ where the right is exercised was not comprised in that order in the specified circumstances⁵, the person who, apart from the compulsory rights order and the statutory right to get any minerals other than coal⁶, would have been entitled to the minerals is entitled⁷ to compensation from the operator of an amount equal to 12.5 per cent of the market value⁸ of the minerals at the time when the right is exercised⁹.

Where more than one person is entitled to such compensation, the amount of compensation mentioned above is apportioned between them according to the values of the interests or rights in respect of which each of them would have been entitled to, or to a share of, the minerals¹⁰.

As soon as reasonably practicable, after the end of every period of 12 months during which any person has exercised such a right¹¹, that person must give written notice¹² to every person appearing to him to be a person entitled to such compensation in respect of any exercise by him during that period of that right¹³.

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

Section 31A (as added) does not apply where the right in question is exercisable by virtue of a compulsory rights order confirmed before the restructuring date (ie 31 October 1994: see PARA 3 note 9 ante): Coal Industry Act 1994 s 52(2), Sch 8 para 24(2).

2 As to the meaning of 'minerals' see PARA 12 note 22 ante.

3 Ie by virtue of the Opencast Coal Act 1958 s 10(1) (as amended): see s 31A(1)(a) (s 31A added by the Coal Industry Act 1994 Sch 8 para 24). For the meaning of 'coal' see PARA 405 note 5 ante.

4 As to the meaning of 'land' see PARA 405 note 4 ante.

5 Ie specified in the Opencast Coal Act 1958 s 33(1) (see PARA 455 ante): see s 31A(1)(b) (as added: see note 3 supra).

6 Ie ibid s 10(1) (as amended): see s 31A(2) (as added: see note 3 supra).

7 Ie is entitled subject to the provisions of ibid s 31A(3)-(7) (as added): see s 31A(2) (as added: see note 3 supra).

8 Where, in the case of any minerals, it would be reasonable for steps for making them saleable or for enhancing their value to be taken on the land between the time when those minerals are got and any sale of the minerals by the operator from the land, it is assumed, for the purpose of determining the market value of those minerals as at the time mentioned in ibid s 31A(2) (as added) (see the text to note 9 infra), that the minerals were in the same condition at the time so mentioned as they would have been had those steps already been taken: s 31A(3) (as added: see note 3 supra).

Any question for the purposes of s 31A(3) (as added) as to the extent to which it would be reasonable for any steps to be taken in relation to any minerals is determined as at the time mentioned in s 31A(3)(a) (as added) and on the assumption that it is not reasonable for steps to be taken where the total cost to the operator of taking those steps is equal to or more than the difference between (1) what would be the market value of the minerals for the purposes of s 31A(2) (as added) if it were reasonable for those steps to be taken; and (2) what would be their market value for those purposes if it were not; and for this purpose, where the minerals would not be saleable without the taking of those steps, the market value referred to in head (2) supra is taken to be nil: s 31A(4) (as so added).

9 Ibid s 31A(2) (as added: see note 3 supra).

10 Ibid s 31A(5) (as added: see note 3 supra).

11 Ie as is mentioned in ibid s 31A(1) (as added): see s 31A(6) (as added: see note 3 supra).

12 Such a notice must describe the minerals in respect of which the entitlement to compensation of the person given the notice arises; and state the amount appearing to the person giving the notice to be the amount which for the purposes of ibid s 31A(2) (as added) (see the text to note 9 supra) is to be taken to be the market value of those minerals as at the time when the right in question was exercised in relation to those minerals: s 31A(7) (as so added). As to the service of notices see PARA 413 ante.

13 Ibid s 31A(6) (as added: see note 3 supra). As to the meaning of 'reasonably practicable' see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 417.

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(iii) Agricultural Land

A. ANNUAL COMPENSATION

463. Meaning of 'holding'.

For the purposes of the compensation provisions of the Opencast Coal Act 1958¹, where land, immediately before the operative date² of a compulsory rights order, was occupied as a unit³ and was so occupied wholly or mainly⁴ for the purposes of agriculture⁵ carried on by way of a trade or business⁶, the entirety⁷ of that land (excluding the coal⁸ and any other minerals⁹ vested in the Coal Authority¹⁰ or the person entitled to rights conferred by the order) is taken, in relation to that compulsory rights order, to constitute a holding¹¹.

1 The Opencast Coal Act 1958 Pt II (ss 17-36) (as amended): see s 17(2) (as amended: see note 11 infra). Where a compulsory rights order is, with the consent of the appropriate authority, made in respect of land in which there is a Crown or Duchy interest (as to the meaning of which see PARA 406 note 2 ante), that interest, in so far as the order confers rights exercisable as against all persons directly concerned, is treated as not being the interest of a person directly concerned, and no compensation is payable under Pt II in respect of that interest: s 44(3) (amended by the Coal Industry Act 1994 ss 52(2), 67(8), Sch 8 para 33, Sch 11 Pt II). See also PARA 406 note 3 ante. For the meaning of 'appropriate authority' see PARA 411 note 8 ante; and as to the meaning of 'land' see PARA 405 note 4 ante. As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

2 For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

3 Opencast Coal Act 1958 s 17(2)(a). Where at any time on or after the operative date and before the end of the period of occupation (for the meaning of which see PARA 424 ante) an act or event occurs by which different persons become entitled to occupy different parts of the holding, or would be so entitled if the order had not been made, as from the occurrence of that act or event each such part must be treated as if it were a separate holding (s 34, Sch 6 para 1(1), (2) (amended by the Coal Industry Act 1994 Sch 8 paras 1, 42(1), (2), (6))) but no compensation is payable by virtue of the Opencast Coal Act 1958 s 17 (as amended) in respect of land so treated which does not include any of the land comprised in the compulsory rights order (Sch 6 para 1(2) proviso). Where at any such time a new tenancy is created comprising the holding or any part of it, that tenancy must be disregarded for the purposes of s 17 (as amended); s 18 (as substituted); Sch 6 para 1 (as amended); Sch 6 para 2 (amended by the Coal Industry Act 1994 Sch 8 paras 1, 42(1), (2), (6)).

The Opencast Coal Act 1958 Sch 6 paras 1(2), 2 do not apply in relation to any compulsory rights order confirmed before the restructuring date (ie 31 October 1994: see PARA 3 note 9 ante): see the Coal Industry Act 1994 Sch 8 paras 1, 42(1), (2), (6); and PARAS 464-465, 471, 495-498 post.

4 'Wholly or mainly' appears to have no uniform meaning, but it would seem that if more than one-half of the holding in question is occupied for the purposes of agriculture, the holding is wholly or mainly so occupied: see *Miller v Otilie (Owners)* [1944] KB 188, [1944] 1 All ER 277, CA; *Berthelemy v Neale* [1952] 1 All ER 437, CA. See also *Glasgow Corp'n v Johnstone* [1965] AC 609, [1965] 1 All ER 730, HL; *Wynn v Skegness UDC* [1966] 3 All ER 336, [1967] 1 WLR 52. The word 'mainly' probably means 'more than half'; cf *Fawcett Properties Ltd v Buckingham County Council* [1961] AC 636 at 669, [1960] 3 All ER 503 at 512, HL, per Lord Morton of Henryton.

5 For the meaning of 'agriculture' see PARA 419 note 3 ante.

6 Opencast Coal Act 1958 s 17(2)(b). Cf the Agricultural Holdings Act 1948 s 1(2) (repealed); the Agricultural Holdings Act 1986 s 1(4); and AGRICULTURAL LAND vol 1 (2008) PARA 324.

7 Where the land comprised in a compulsory rights order consists of or includes land of which, immediately before the operative date of the order, the surface is occupied by one person and any of the subjacent strata by another, those subjacent strata are not to be treated as constituting a holding to which the Opencast Coal Act

1958 s 17 (as amended), s 21 (as amended) or s 29 (as amended) applies: s 33(1), Sch 5 para 15(1). Where for any year compensation would be payable under s 17 (as amended) in respect of a holding, but it may reasonably be assumed that part of the holding would have been prevented from being used in the same way and with the same standard of efficiency as in the period preceding the operative date of the order if the order had not been made, and the person carrying on the relevant undertaking had exercised the relevant rights and facilities in the manner in which, in those circumstances, he might reasonably have been expected to exercise them (see PARA 456 note 6 ante), the provisions of s 18 (as substituted); and s 19 (repealed) apply in relation to that year as if that part of the holding were not comprised in the holding, and any reference to the entirety of the holding in s 18 (as substituted); and s 19 (repealed) is to be construed accordingly: Sch 5 para 14(1), (2). For the meaning of 'year' see PARA 449 note 7 ante; for the meaning of 'relevant undertaking' see PARA 456 note 5 ante; and for the meaning of 'relevant rights and facilities' see PARA 449 note 10 ante.

8 For the meaning of 'coal' see PARA 405 note 5 ante.

9 As to the meaning of 'minerals' see PARA 12 note 22 ante.

10 As to the Coal Authority see PARA 52 et seq ante.

11 Opencast Coal Act 1958 s 17(2) (amended by the Coal Industry Act 1994 Sch 8 para 15(3)).

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464. Annual compensation generally.

Where a compulsory rights order¹ comprises the whole or part of a holding², compensation is payable in respect of that holding for the year³ beginning with the operative date⁴, and for each subsequent year which begins with an anniversary of that date and falls wholly or partly within the period of occupation⁵.

Subject (where different persons have been entitled to the rights for different parts of the year) to any apportionment⁶, the liability to pay such compensation falls on the persons who, for the whole or any part of the year in question, have been entitled to the rights conferred by the order⁷.

The compensation payable for any year in respect of a holding⁸ is a sum equal to the annual borrowing cost for that year of the market value of the rights conferred by the compulsory rights order in relation to the holding⁹.

Subject to certain provisions¹⁰, the person entitled to any compensation payable for any year¹¹ in respect of a holding is the person who in respect of so much, if any, of the holding as is not comprised in the compulsory rights order, is for the time being entitled to occupy¹² that part of the holding, and in respect of so much of the holding as is comprised in the order, would be entitled for the time being to occupy it if the order had not been made¹³.

Where the period for which a compulsory rights order is to have effect is extended¹⁴ under the Opencast Coal Act 1958, the provisions as to annual compensation¹⁵ have effect in relation to the additional period as if the rights conferred for that period had been conferred by a new compulsory rights order¹⁶.

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

2 Ie to which *ibid* s 17 (as amended) applies: see s 17(1) (as amended: see note 4 *infra*). For the meaning of 'holding' see PARA 463 ante.

3 For the meaning of 'year' see PARA 449 note 7 ante.

4 Opencast Coal Act 1958 s 17(1)(a) (amended by the Coal Industry Act 1994 ss 52(2), 67(8), Sch 8 para 15(1), Sch 11 Pt II). For the meaning of 'the operative date' see PARA 423 text to note 1 ante. As to terminal compensation see PARA 466 post. As to additional compensation on re-occupation see PARA 471 post. As to the time when compensation payable under the Opencast Coal Act 1958 s 17 (as amended) (or under s 17 (as amended) as applied by s 29 (as amended)) accrues due see PARA 501 post. As to claims for compensation see PARA 500 post. As to the provisions for compensation in relation to certain restricted lettings, easements and similar rights see PARAS 482, 494 post.

5 *Ibid* s 17(1)(b) (as amended: see note 4 *supra*). For the meaning of 'the period of occupation' see PARA 424 ante.

6 Ie under *ibid* s 35(3): see s 17(1A) (as added: see note 7 *infra*).

7 *Ibid* s 17(1A) (added by the Coal Industry Act 1994 Sch 8 para 15(2)).

8 Ie a holding to which the Opencast Coal Act 1958 s 17 (as amended) applies: see s 18(1) (as substituted: see note 9 *infra*).

9 Ibid s 18(1) (s 18 substituted by the Coal Industry Act 1994 Sch 8 para 16). Subject to the Opencast Coal Act 1958 s 35(2) (as amended), any such compensation payable by virtue of s 17 (as amended) is considered as accruing due from day to day and is apportionable in respect of time accordingly: s 35(3).

Section 18 (as substituted) applies in relation to any compulsory rights order confirmed on or after the restructuring date (ie 31 October 1994: see PARA 3 note 9 ante): see the Coal Industry Act 1994 Sch 8 para 16. On and after the restructuring date compensation payable under the Opencast Coal Act 1958 is payable in respect of any compulsory rights order made before that date as if the British Coal Corporation were the person on whose application that order was made: Coal Industry Act 1994 s 67(7), Sch 10 para 9(6). As to the British Coal Corporation see PARAS 2-3 ante.

The Opencast Coal Act 1958 ss 19, 20 were repealed by the Coal Industry Act 1994 Sch 8 paras 1, 17, Sch 11 Pt III, with effect in relation to any compulsory rights order confirmed on or after the restructuring date (ie 31 October 1994: see PARA 3 note 9 ante).

10 Ie subject to the Opencast Coal Act 1958 s 17(3A) (as added): see s 17(3) (as amended: see note 13 infra).

11 Ie by virtue of ibid s 17 (as amended): see s 17(3) (as amended: see note 13 infra).

12 Any agreement for the letting of land or the grant of a licence in respect of land, where, before the agreement was entered into, the letting or grant was approved under the Agricultural Holdings Act 1986 s 2 or the Agricultural Holdings Act 1948 s 2 (repealed) (see AGRICULTURAL LAND vol 1 (2008) PARA 153) (each of which relates to the effect of certain lettings and licences to occupy agricultural land, but excepts lettings and licences approved under that provision from the operation of that provision) are treated for the purposes of the Opencast Coal Act 1958 s 17 (as amended) as conferring a right to occupy the land to which the agreement relates, if apart from s 34, Sch 6 para 24 (as amended) it would not be treated as conferring such a right: Sch 6 para 24 (amended by the Agricultural Holdings Act 1986 s 100, Sch 14 para 32).

For the purposes of the Opencast Coal Act 1958 Pt II (ss 17-36) (as amended), in its application to land in which there is an interest which is subject to a mortgage (as to the meaning of which see PARA 430 note 6 ante), a mortgagee is not to be taken to be entitled to occupy that land, or to be the person who, but for a compulsory rights order, would be entitled to occupy it, unless (1) the interest which is subject to the mortgage is the interest of the person who, apart from the mortgage, is entitled to occupy that land, or who would, but for the order, be entitled to occupy it (s 43(1)(a)); and (2) the mortgagee is, to the extent of the interest comprised in the mortgage, and subject to the rights conferred by the order, in possession of the land or of its rents and profits (s 43(1)(b)). If, in those circumstances, a mortgagee is the person entitled to any annual compensation under Pt II (ie such compensation as is mentioned in s 35(2) (as amended): s 43(7); and see PARA 501 post), any such compensation paid to him must be applied by him in or towards the satisfaction of interest arising under the mortgage, and, in so far as not so applied, must be applied towards the reduction of the principal debt secured by the mortgage: s 43(2).

13 Ibid s 17(3) (amended by the Coal Industry Act 1994 Sch 8 para 15(4), Sch 11 Pt II). See also note 12 supra.

Where (1) any compensation is payable for any year by virtue of the Opencast Coal Act 1958 s 17 (as amended) in respect of any holding; and (2) the amount of that compensation falls to be calculated in accordance with s 18 (as substituted) by reference to the market value of rights which, if the compulsory rights order were not in force, could not be conferred for that year or any part of it except by or with the consent of one or more persons who are included in the persons directly concerned but do not fall within s 17(3) (as amended), the entitlement to that compensation is apportioned, according to the extent to which those rights could not be conferred for that year or part of a year without their participation or consent, between those persons and any person falling within s 17(3) (as amended): s 17(3A) (s 17(3A)-(3C) added by the Coal Industry Act 1994 Sch 8 para 15(5)).

Subject to the Opencast Coal Act 1958 s 17(3C) (as added), the persons entitled under s 17(3A) (as added) to a share of any compensation includes persons whose participation in or consent to the conferring of any right would be required if the right were conferred at some time after the beginning of the year or part of a year in question; and any apportionment under s 17(3A) (as added) is to take account of the length of the period for which any person is, during that year or part of a year, a person without whose participation or consent any right could not be conferred: s 17(3B) (as so added).

No person is entitled under s 17(3A) (as added) to any share of any compensation in respect of any such easement or right as might give rise to an entitlement to compensation under s 31 (as amended): s 17(3C) (as so added).

These provisions do not apply in relation to any compulsory rights order confirmed before the restructuring date (ie 31 October 1994: see PARA 3 note 9 ante): see the Coal Industry Act 1994 Sch 8 paras 1, 15(5)-(7), Sch 11 Pt III.

14 As to the variation and extension of orders see the Opencast Coal Act 1958 s 49(4), (5) (as amended); and PARA 409 ante.

15 le *ibid* s 17 (as amended); and s 18 (as substituted): see s 18(6) (as substituted: see note 16 *infra*).

16 *Ibid* s 18(6) (s 18 substituted by the Coal Industry Act 1994 Sch 8 para 16).

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465. Calculation of annual compensation.

The compensation payable for any year¹ in respect of a holding to which the Opencast Coal Act 1958² applies is a sum equal to the annual borrowing cost for that year of the market value³ of the rights conferred by the compulsory rights order⁴ in relation to the holding⁵.

In calculating for these purposes⁶ the fair market price⁷ for the grant of any rights, due allowance is to be made for any entitlement to compensation which may arise⁸, under any of the provisions of the Act⁹.

Nothing in the provisions of the Act relating to annual compensation or its calculation¹⁰ confers any entitlement to compensation in respect of the annual borrowing cost of any amount representing the value of any person's interest in coal¹¹, or any amount representing the value of any opportunity arising by virtue of an interest or right in or in relation to any land¹² to obtain or make use of any rights to win, work or get any coal¹³.

1 For the meaning of 'year' see PARA 449 note 7 ante.

2 Ie the Opencast Coal Act 1958 s 17 (as amended): see s 18(1) (as substituted: see note 5 infra). For the meaning of 'holding' see PARA 463 ante.

3 For the purposes of ibid s 18 (as substituted), the market value of any rights conferred by a compulsory rights order is equal to the amount which, as at the date of entry, would (apart from the order) represent the fair market price, as between willing and independent parties, for the grant of those rights by a person entitled to grant them and for the period for which the order is to have effect: s 18(2) (as substituted: see note 5 infra). For the meaning of 'the date of entry' see PARAS 424 note 1, 434 note 2 ante.

4 As to compulsory rights orders see ibid s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

5 Ibid s 18(1) (s 18 substituted by the Coal Industry Act 1994 s 52(8), Sch 8 para 16). The Opencast Coal Act 1958 s 18 (as substituted) applies in relation to compulsory rights orders confirmed on or after the restructuring date (ie 31 October 1994: see PARA 3 note 9 ante): see the Coal Industry Act 1994 Sch 8 paras 1, 16; and PARA 464 note 9 ante.

The Opencast Coal Act 1958 s 18 (as originally enacted) and ss 19, 20 (prior to their repeal) (additional annual compensation and special compensation for cost of removal) provided for compensation for a compulsory rights order by reference to annual value, and for additional annual compensation and for compensation for the cost of removal. Sections 19, 20 (both repealed) do not have effect in relation to any compulsory rights order confirmed on or after the restructuring date (ie 31 October 1994: see PARA 3 note 9 ante): Coal Industry Act 1994 s 67(8), Sch 8 paras 1, 17, Sch 11 Pt III.

6 Ie the purposes of the Opencast Coal Act 1958 s 18 (as substituted): see s 18(3) (as substituted: see note 5 supra).

7 See note 3 supra. For the purposes of ibid s 18 (as substituted), the annual borrowing cost for any year of any amount ('the market price') is the aggregate sum which would fall to be paid in that year by way of payments of interest and re-payments of capital if the market price had been borrowed on the date of entry on terms which: (1) required interest to be paid and capital to be repaid by way of the relevant number of equal annual instalments; and (2) provided for interest on outstanding capital to become due immediately before the time for the payment of each instalment, at an annual rate equal, as at the entry date, to the rate prescribed under s 35(8) (see PARA 501 post): s 18(4) (as substituted: see note 5 supra). 'The relevant number' means the number of years for which, when it was confirmed, the compulsory rights order was to have effect: s 18(4) (as so substituted).

As to market value see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 797 et seq.

8 le otherwise than by virtue of *ibid* s 17 (as amended): see s 18(3) (as substituted: see note 5 *supra*).

9 *Ibid* s 18(3) (as substituted: see note 5 *supra*).

10 le nothing in *ibid* s 17 (as amended) or s 18 (as substituted): see s 18(5) (as substituted: see note 5 *supra*).

11 For the meaning of 'coal' see *PARA* 405 note 5 *ante*.

12 As to the meaning of 'land' see *PARA* 405 note 4 *ante*.

13 *Opencast Coal Act* 1958 s 18(5) (as substituted: see note 5 *supra*).

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B. TERMINAL COMPENSATION

466. In general.

Where a compulsory rights order¹ comprises the whole or part of a holding², the Opencast Coal Act 1958³ has effect as to compensation payable in respect of that holding by the person (called the 'final operator'⁴) who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order⁵.

Compensation payable in respect of a holding under these provisions consists of either or both of the following: (1) compensation by way of payment of cost of works⁶; and (2) compensation by reference to the diminution in value of the holding⁷.

¹ As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

² I.e a holding to which *ibid* s 21 (as amended) applies: see s 21(1) (as amended: see note 5 *infra*). For the meaning of 'holding' see PARA 463 ante. Section 17(2) (as amended) (see PARA 463 ante) has effect in relation to s 21 (as amended) as it has effect in relation to s 17 (as amended), and references to a holding to which s 21 (as amended) applies are construed accordingly: s 21(2).

Where the land comprised in a compulsory rights order consists of or includes land of which, at the end of the period of occupation, the surface is owned by one person and any of the subjacent strata by another, the subjacent strata are not to be treated as constituting or forming part of a holding to which s 21 (as amended) applies, or a holding in respect of which s 21 (as amended) has effect as applied by s 29 (as amended): s 33(1), Sch 5 para 15(2). See also PARA 463 note 7 ante. For the meaning of 'the period of occupation' see PARA 424 ante. Where a compulsory rights order comprises the whole or part of a holding to which s 21 (as amended) applies, and at the end of the period of occupation one person is the owner of part of the holding and another person the owner of another part (s 34, Sch 6 para 4(1)), then for the purposes of ss 21-23 (as amended) each of those parts is to be treated as if it were a separate holding to which s 21 (as amended) applied (Sch 6 para 4(2)); but no compensation is payable by virtue of ss 21-23 (as amended) in respect of land thus treated as a separate holding which does not include any of the land comprised in the order (Sch 6 para 4 proviso). See further PARA 495 post.

³ I.e the provisions of *ibid* ss 21-23 (as amended): see s 21(1) (as amended: see note 5 *infra*).

⁴ For the purposes of *ibid* s 22(3), Sch 3 (as amended), the 'final operator' means the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order: Sch 3 para 1 (definition added by the Coal Industry Act 1994 s 52(2), Sch 8 paras 1, 40(1)(a)). For the meaning of 'the period of occupation' see PARA 424 ante.

⁵ Opencast Coal Act 1958 s 21(1) (amended by the Coal Industry Act 1994 Sch 8 para 18).

⁶ Opencast Coal Act 1958 s 21(3)(a). As to cost of works see PARA 467 post.

⁷ *Ibid* s 21(3)(b). As to compensation for diminished value see PARA 470 post. As to provisions for additional compensation on reoccupation see PARA 471 post.

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467. Cost of works.

If at the end of the period of occupation¹ any land² forming part of the holding³ and comprised in the compulsory rights order⁴ has not been restored⁵ to the condition⁶ in which it was immediately before the date of entry⁷, and after the end of that period expenses are reasonably incurred by any person in respect of work carried out, over and above the ordinary maintenance and use of the land, for the purpose of further restoring that land to or towards that condition or a substantially similar condition⁸, compensation is payable⁹ of an amount equal to those expenses¹⁰. Expenses are not treated as having been reasonably incurred if the work was begun more than 15 years after the end of the period of occupation¹¹ except in the case of work required for making good damage caused by the settlement of soil replaced in the course of restoring the land or any other damage to the land caused by subsidence which is attributable to anything done in the exercise of rights conferred by the compulsory rights order in question¹². Where it is shown that the expenses incurred in carrying out any work exceeded the reasonable cost of the work, having regard to the prices of materials and rates of remuneration for services current at the time when the work is carried out¹³, any claim for compensation in respect of those expenses is to be disallowed to the extent of the excess¹⁴.

1 For the meaning of 'the period of occupation' see PARA 424 ante.

2 As to the meaning of 'land' see PARA 405 note 4 ante.

3 For the meaning of 'holding' see PARA 463 ante.

4 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

5 As to the meaning of 'restore' see PARA 415 note 9 ante.

6 See PARA 453 note 4 ante.

7 Opencast Coal Act 1958 s 22(1)(a). For the meaning of 'the date of entry' see PARAS 424 note 1, 434 note 2 ante.

8 Ibid s 22(1)(b). Where an agricultural holding held under a tenancy in relation to which the Agricultural Holdings Act 1986 applies, or a holding under a farm business tenancy, consists of or includes land which was comprised in a compulsory rights order, and after the end of the period of occupation the landlord proposes to carry out any such work as is mentioned in the Opencast Coal Act 1958 s 22(1)(b), the landlord or any person authorised by him may at all reasonable times enter upon the holding for the purpose of carrying out that work: s 37, Sch 7 para 6(1) (amended by the Agricultural Tenancies Act 1995 s 40, Schedule para 20(9)(a)). Nothing in the Opencast Coal Act 1958 Sch 7 para 6(1) affects any right exercisable by virtue of the Agricultural Holdings Act 1986 s 23 (which confers rights of entry for certain purposes): Opencast Coal Act 1958 Sch 7 para 6(2) (amended by the Agricultural Holdings Act 1986 s 100, Sch 14 para 33). In the Opencast Coal Act 1958 Sch 7 para 6(1), 'holding', in relation to a farm business tenancy, has the same meaning as in the Agricultural Tenancies Act 1995 (see AGRICULTURAL LAND vol 1 (2008) PARA 302): Opencast Coal Act 1958 Sch 7 para 6(2A) (added by the Agricultural Tenancies Act 1995 Schedule para 20(9)(b)).

Where a holding to which the Landlord and Tenant Act 1927 Pt I (ss 1-17) (as amended) applies consists of or includes land which was comprised in a compulsory rights order, and after the end of the period of occupation the landlord proposes to carry out any such work as is mentioned in the Opencast Coal Act 1958 s 22(1)(b), the landlord or any person authorised by him may at all reasonable times enter upon the holding for the purpose of carrying out that work: Sch 7 para 11(1). Nothing in Sch 7 para 11(1) affects any right exercisable by virtue of the Landlord and Tenant Act 1927 s 10 (which confers rights of entry for certain purposes): Opencast Coal Act 1958 Sch 7 para 11(2).

9 Compensation is payable from time to time as the expenses are incurred to the person who incurs them: *ibid* s 22(2)(a), (b).

10 *Ibid* s 22(1), (2)(b). The provisions of Sch 3 (as amended) have effect with regard to such compensation: s 22(3); and see PARAS 468-469 post. Such compensation is not payable in respect of work carried out on land that forms part of the holding and is land to which Sch 5 (as amended) applies (see PARA 455 note 7 ante): s 33(1), Sch 5 para 14(3).

11 *Ibid* s 22(3), Sch 3 para 11(1).

12 *Ibid* Sch 3 para 11(2). As to subsidence damage see PARA 184 et seq ante.

13 This reasonable cost is referred to in *ibid* Sch 3 (as amended) as 'the proper cost': Sch 3 para 1.

14 *Ibid* Sch 3 para 12. Except in so far as objection is made to any work on the grounds mentioned in Sch 3 para 4(c) (see PARA 468 note 10 head (3) post), expenses incurred in carrying out any work may not be disallowed, wholly or in part, on the ground that the proper cost of that work, or of that work together with any other work, is greater than any increase attributable to it in the value of the land: Sch 3 para 13(1).

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468. Procedure for obtaining cost of works compensation.

The final operator¹ is not required to pay compensation² in respect of expenses incurred in carrying out any work unless: (1) not less than the prescribed³ length of time before the work was begun, the person incurring the expenses gave to the final operator notice in writing⁴ containing adequate particulars of the work, together with a statement of the time when it was proposed to carry out the work and an estimate of the cost of the work⁵; and (2) at all reasonable times after the service of that notice, that person afforded to the final operator reasonable facilities to inspect the land⁶ to which the notice related, in so far as he was in a position to afford such facilities⁷.

Where such a notice has been given, the final operator, within the prescribed time after the giving of that notice, may serve on the applicant a counter-notice⁸, stating that he objects: (a) to the work specified in the applicant's notice, or to such one or more items as may be specified in the counter-notice⁹; and (b) on such one or more grounds as may be specified in the counter-notice¹⁰. If more than one notice is given in respect of the same land, and the current notice specifies similar work to that specified in a previous notice the specified grounds are modified¹¹.

Where a notice has been given¹², and the applicant has incurred expenses in carrying out any of the work specified in that notice, and claims compensation in respect of those expenses, if the final operator has not served a counter-notice¹³ in respect of that notice, he is not entitled to object to that claim on any of the specified grounds¹⁴; if the final operator has served such a counter-notice, he is not entitled to object to that claim on any of the specified grounds¹⁵, except in so far as the claim relates to items which were specified in the counter-notice and the objection is on grounds which were so specified in relation to those items¹⁶.

1 For the meaning of 'final operator' see PARA 466 note 4 ante.

2 'Compensation' means compensation under the Opencast Coal Act 1958 s 22 (see PARA 467 ante): s 22(3), Sch 3 para 1.

3 For the meaning of 'prescribed' see PARA 421 note 13 ante.

4 The notice must be given not less than 56 days before the work, particulars of which are set out in the notice, is begun, by delivering it at or sending it in a prepaid registered letter or by the recorded delivery service to either the principal office of the final operator or such other office of the final operator as it has notified in writing to the person giving the notice as an office at which such a notice may be served: Opencast Coal (Notice of Work) Regulations 1958, SI 1958/1649, reg 3 (amended by SI 1962/1696; and by virtue of the Coal Industry Act 1994 s 52(2), Sch 8 paras 1, 40).

5 Opencast Coal Act 1958 Sch 3 para 2(1)(a) (amended by the Coal Industry Act 1994 Sch 8 paras 1, 40). As to cost of works see PARA 467 ante.

6 As to the meaning of 'land' see PARA 405 note 4 ante.

7 Opencast Coal Act 1958 Sch 3 para 2(1)(b) (as amended: see note 5 supra). The person giving such a notice is referred to in Sch 3 (as amended) as 'the applicant': Sch 3 para 2(2).

8 The counter-notice must be served within 42 days after the notice has been given: Opencast Coal (Notice of Work) Regulations 1958, SI 1958/1649, reg 4 (amended by virtue of the Coal Industry Act 1994 Sch 8 paras 1, 40). As to the service of notices see PARA 413 ante.

9 Opencast Coal Act 1958 Sch 3 para 3(a) (amended by the Coal Industry Act 1994 Sch 8 para 40).

10 Opencast Coal Act 1958 Sch 3 para 3(b) (as amended: see note 9 supra). The specified grounds are:

- 128 (1) that the work could not reasonably be regarded as work falling within s 22(1)(b) (see PARA 467 ante) (Sch 3 para 4(a));
- 129 (2) that the work is likely to be ineffective, or is by its nature unsuitable to the land in question, or is proposed to be carried out in an unsuitable way (Sch 3 para 4(b));
- 130 (3) that the estimated cost of the work (arrived at by agreement or by reference to the Lands Tribunal (Sch 3 paras 1, 6)) is grossly disproportionate to any prospective increase attributable to the work in the value of the land (Sch 3 para 4(c));
- 131 (4) that the work, in a case where the former use (ie the use immediately before the operative date of the order (Sch 3 para 1)) of the land in question was agricultural, would not be appropriate to the use of that land for agriculture (for the meaning of which see PARA 419 note 3 ante) or, in any other case, would not be appropriate to the use of that land for its former use (Sch 3 para 4(d));
- 132 (5) that the work would not be required but for dilapidation, deterioration or damage which has occurred since the end of the period of occupation and is attributable to default on the part of the owner or of an occupier of the land (Sch 3 para 4(e));
- 133 (6) that the work, if carried out at the time specified in the applicant's notice, would be premature (Sch 3 para 4(f));
- 134 (7) that the work, if carried out at that time, would not have been carried out at the first reasonable opportunity after the end of the period of occupation, or within a reasonable time after that opportunity arose (Sch 3 para 4(g)).

The reference to default in head (5) supra is to be construed in accordance with Sch 3 para 7: Sch 3 para 7(1).

In relation to agricultural land, the reference to default on the part of the owner is construed as a reference to failure on his part to manage the land in accordance with the rules of good estate management, and the reference to default on the part of an occupier of the land is construed as a reference to failure on the part of such an occupier to fulfil his responsibilities to farm the land in accordance with the rules of good husbandry: Sch 3 para 7(2). In relation to any other land, the reference to default on the part of the owner is construed as a reference to failure on his part to deal with the land in a proper and due course of management, and the reference to default on the part of an occupier of the land is construed as a reference to failure on the part of such an occupier to maintain and use the land in a reasonable manner: Sch 3 para 7(3). The Agriculture Act 1947 ss 10, 11 (which prescribe tests for determining good estate management and good husbandry) apply for the purposes of the Opencast Coal Act 1958 Sch 3 para 7(2): Sch 3 para 7(4).

Subject to Sch 3 para 13(1) (see PARA 467 note 14 ante), nothing in Sch 3 (as amended) is to be construed as precluding the final operator from maintaining any objection to a claim for compensation, in so far as the objection is on any grounds other than those mentioned in Sch 3 para 4: Sch 3 para 13(2) (amended by the Coal Industry Act 1994 Sch 8 paras 1, 40).

11 Thus for the Opencast Coal Act 1958 Sch 3 para 4(c) (see note 10 head (3) supra) there is substituted the ground that the aggregate cost of that work and of all relevant work specified in previous notices relating to the same land is grossly disproportionate to the aggregate increase attributable to all such work in the value of the land: Sch 3 para 5(1). Consequential amendments in the procedure for obtaining compensation in such circumstances are contained in Sch 3 para 5(2)-(6) (as amended).

In Sch 3 para 4(c) (as substituted by Sch 3 para 5(1)) the reference to the aggregate cost of the new work and of all other relevant work specified in previous notices relating to the same land is a reference to the aggregate of the estimated cost of the new work (Sch 3 para 5(2)(a)), and the estimated cost of any similar work specified in any previous notice given by the applicant which is still outstanding on the relevant date (Sch 3 para 5(2)(b)), and the proper cost of any similar work specified in any previous notice given by the applicant in respect of which a claim for compensation has been allowed before the relevant date or is still outstanding on that date (Sch 3 para 5(2)(c)). In Sch 3 para 4(c) (as substituted by Sch 3 para 5(1)) the reference to the aggregate increase attributable to all such work as is therein mentioned in the value of the land is a reference to the aggregate of the prospective increase in that value attributable to the new work (Sch 3 para 5(3)(a)), and the prospective increase in that value attributable to any similar work specified in any previous notice given by the applicant which is still outstanding on the relevant date (Sch 3 para 5(3)(b)), and the increase in that value attributable to any similar work specified in any previous notice given by the applicant in respect of which a claim for compensation has been allowed before the relevant date or is still outstanding on that date (Sch 3 para 5(3)(c)). For these purposes: (1) a previous notice specifying similar work is taken to be outstanding on the

relevant date if such a notice has been given before the relevant date and has not been withdrawn, and either the final operator has not before that date served a counter-notice objecting to that work, or, if the final operator has served such a counter-notice, that objection has before that date been withdrawn or determined by the Lands Tribunal not to be well-founded, and no claim for compensation has before the relevant date been made in respect of expenses incurred in carrying out that work (Sch 3 para 5(4)(a) (Sch 3 para 5(4), (5) amended by the Coal Industry Act 1994 Sch 8 paras 1, 40)); (2) a claim for compensation in respect of any work is taken to have been allowed before the relevant date if before that date a claim for compensation has been made in respect of expenses incurred in carrying out that work, and it has been agreed by the final operator, or determined by the Lands Tribunal, that compensation is payable in respect of those expenses, whether the amount of compensation so agreed or determined to be payable was the amount claimed or a different amount (Opencast Coal Act 1958 Sch 3 para 5(4)(b) (as so amended)); (3) a claim for compensation in respect of any work is taken to be still outstanding on the relevant date if at that date a claim for compensation has been made in respect of expenses incurred in carrying out that work, and that claim has not been withdrawn, and it has not been determined by the Lands Tribunal that no compensation is payable in respect of those expenses, but it has not been agreed by the final operator or determined by the Tribunal, that compensation is payable in respect of those expenses (Sch 3 para 5(4)(c) (as so amended)).

In Sch 3 para 5 (as amended), 'similar work', in relation to the new work, means work directed to the same aspect of restoration as the new work; 'previous notice', in relation to the current notice, means a notice given under Sch 3 para 2 (as amended) before the date on which the current notice was given; and 'the relevant date', in relation to the current notice, means the date on which the final operator serves a counter-notice objecting to the new work, or the date on which the time for serving such a counter-notice expires, whichever is the earlier: Sch 3 para 5(5) (as so amended). In Sch 3 paras 6-13 (as amended) (except where the contrary is expressly provided) any reference to Sch 3 para 4(c), in relation to work to which Sch 3 para 4 applies in accordance with Sch 3 para 5(1), is construed as a reference to Sch 3 para 4(c) (as substituted by Sch 3 para 5(1)), and any reference in Sch 3 (as amended) to the grounds mentioned in Sch 3 para 4 is construed accordingly: Sch 3 para 5(6).

12 Ie under *ibid* Sch 3 para 2 (as amended): see Sch 3 para 8 (as amended: see note 14 *infra*).

13 Ie under *ibid* Sch 3 para 3 (as amended): see Sch 3 para 8(a) (as amended: see note 14 *infra*).

14 *Ibid* Sch 3 para 8(a) (Sch 3 para 8(a), (b) amended by the Coal Industry Act 1994 Sch 8 paras 1, 40). The grounds referred to are those set out in the Opencast Coal Act 1958 Sch 3 para 4: see note 10 *supra*. See, however, Sch 3 para 13(2) (as amended: see note 10 *supra*).

15 The grounds referred to are those set out in *ibid* Sch 3 para 4: see note 10 *supra*.

16 *Ibid* Sch 3 para 8(b) (as amended: see note 14 *supra*).

UPDATE

468 Procedure for obtaining cost of works compensation

NOTE 10--In head (3), for 'Lands Tribunal' read 'Upper Tribunal': Opencast Coal Act 1958 Sch 3 para 1 (amended by SI 2009/1307).

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469. Determination of objections.

Where a notice has been given¹, and the final operator² has served a counter-notice objecting to the work specified in the notice, or to one or more items in it, the applicant, before beginning to carry out any item to which such an objection relates, may require the question whether the objection is well-founded to be referred to the Lands Tribunal³. If on such a reference the Lands Tribunal determines that the objection is not well-founded, and the applicant incurs expenses in carrying out any of the work to which the objection relates and claims compensation in respect of those expenses, then⁴ the final operator is not entitled to object to that claim on any of the grounds which were the grounds of that objection⁵.

¹ *Ibid* under the Opencast Coal Act 1958 s 22, Sch 3 para 2 (as amended) (see PARA 468 ante): see Sch 3 para 9(1) (as amended: see note 3 infra).

² For the meaning of the 'final operator' see PARA 466 note 4 ante.

³ Opencast Coal Act 1958 Sch 3 paras 1, 9(1) (amended by the Coal Industry Act 1994 s 52(2), Sch 8 paras 1, 40). As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

⁴ *Ibid* in addition to any grounds on which the final operator is precluded by the Opencast Coal Act 1958 Sch 3 para 8 (as amended) from objecting to that claim: see Sch 3 para 9(2) (as amended: see note 3 supra).

⁵ *Ibid* Sch 3 para 9(2) (as amended: see note 3 supra). If on such a reference the Tribunal determines that the objection is well-founded, and the applicant incurs expenses in carrying out any of the work to which the objection relates, and claims compensation in respect of those expenses: (1) if the objection was on the grounds mentioned in any of Sch 3 para 4(a), (b), (c), (d), (e) (see PARA 468 note 10 heads (1)-(5) ante), no compensation is payable in respect of those expenses; (2) if the objection was on the grounds mentioned in Sch 3 para 4(f) (see PARA 468 note 10 head (6) ante), no compensation is payable in respect of those expenses by virtue of the notice referred to in Sch 3 para 9(1) (as amended), but without prejudice to the service of a further notice under Sch 3 para 2 (as amended) in respect of the work in question; (3) if the objection was on the grounds mentioned in Sch 3 para 4(g) (see PARA 468 note 10 head (7) ante), the expenses are disallowed by virtue of this provision in so far as (but no further than) they were greater than they would have been if the work to which the objection related had been carried out at the first reasonable opportunity after the end of the period of occupation: Sch 3 para 9(3).

If, in a case where such a notice has been given, and the final operator has served a counter-notice objecting to the work specified in the notice, or to one or more items in it: (a) the applicant incurs expenses in carrying out work to which the objection relates, without having required the question whether the objection is well-founded to be referred to the Tribunal, and claims compensation in respect of those expenses; (b) on a reference to the Tribunal with respect to that claim the final operator maintains the objection; and (c) on that reference the Tribunal determines that the objection is well-founded, heads (1)-(3) supra apply (subject to the provisions of Sch 3 para 10 (as amended)) as they apply in the circumstances mentioned in Sch 3 para 9(3): Sch 3 para 10(1) (amended by the Coal Industry Act 1994 Sch 8 paras 1, 40).

Where the objection was on the grounds mentioned in the Opencast Coal Act 1958 Sch 3 para 4(c) (see PARA 468 note 10 head (3) ante) (otherwise than in a case falling within Sch 3 para 5 (as amended)) so much of Sch 3 para 10(1) (as amended) as relates to the maintenance of the objection, and to a determination that the objection is well-founded, applies as if, in Sch 3 para 4(c), the reference to the estimated cost of the work were a reference to the proper cost of the work: Sch 3 para 10(2).

Where the objection was on the grounds mentioned in Sch 3 para 4(c) (as substituted by Sch 3 para 5(1): see PARA 468 ante), so much of Sch 3 para 10(1) (as amended) as relates to the maintenance of the objection, and to a determination that the objection is well-founded, applies as if, in Sch 3 para 5 (as amended), any reference to the relevant date were a reference to the date on which the question whether compensation is payable in respect of expenses incurred in carrying out the new work (within the meaning of Sch 3 para 5 (as amended)) falls to be determined by the Tribunal, and the objection had been formulated accordingly: Sch 3 para 10(3).

UPDATE

469 Determination of objections

TEXT AND NOTES--The Lands Tribunal has been abolished and its functions have been transferred to the Upper Tribunal: Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009, SI 2009/1307, art 2 (see COMPULSORY ACQUISITION vol 18 (2009) PARA 720 et seq). Opencast Coal Act 1958 Sch 3 para 1 amended: SI 2009/1307.

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470. Compensation for diminished value.

In the case of an agricultural holding¹ the following values must be computed: (1) where the entirety of the holding is comprised in the compulsory rights order², the value at the end of the period of occupation³ of a freehold interest in the holding⁴; (2) where part of the holding is not comprised in the order, the value such an interest would have at the end of the period of occupation if that part of the holding were in the state⁵ in which it was immediately before the date of entry⁶, the remainder of the holding being taken to be in the state in which it is at the end of the period of occupation⁷; (3) in either case, the value which a freehold interest in the holding would have at the end of the period of occupation if the entirety of the holding were in the state in which it was immediately before the date of entry⁸.

If the value of a freehold interest in the holding computed as in head (1) or head (2) above, as the case may be, but with the benefit of any prospective right to compensation by way of payment of cost of works⁹ in respect of the holding, is less than the value of such an interest computed as in head (3) above, compensation is payable to the owner of the holding at the end of the period of occupation of an amount equal to the difference¹⁰.

1 le a holding to which the Opencast Coal Act 1958 s 17(2) (as amended) (see PARA 466 note 2 ante) applies: see s 23(1).

2 As to compulsory rights orders see *ibid* s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

3 For the meaning of 'the period of occupation' see PARA 424 ante.

4 Opencast Coal Act 1958 s 23(2)(a). In computing value as mentioned in s 23(2)(a), (b) or (c), it must be assumed that a freehold interest in the holding is, in the circumstances, being offered for sale in the open market by a willing seller immediately after the end of the period of occupation, with vacant possession and free of incumbrances, other than any easement or similar right, any right restrictive of the use of land, and any mining lease or order conferring working rights affecting the holding or any part of it at that time: s 23(4). For the meaning of 'similar right' see PARA 430 note 3 ante; and for the meaning of 'order conferring working rights' see PARA 430 note 7 ante.

'Incumbrance', in relation to any land, includes any interest in or right over that land (including any such right inuring for the benefit of the public or of a section of it): s 51(1).

In the case of property of a kind not normally the subject of sales in the open market, the Secretary of State may make regulations providing for value to be ascertained by reference to such matters as may be specified in the regulations: s 34, Sch 6 para 14. At the date at which this volume states the law no such regulations had been made. As to regulation-making powers generally see PARA 409 ante. As to the Secretary of State see PARA 4 ante.

5 See PARA 453 note 4 ante.

6 For the meaning of 'the date of entry' see PARAS 424 note 1, 434 note 2 ante.

7 Opencast Coal Act 1958 s 23(2)(b). See also note 4 supra.

8 *Ibid* s 23(2)(c). See also note 4 supra.

9 As to cost of works compensation see PARA 467 ante.

10 Opencast Coal Act 1958 s 23(1), (3). If the entirety of the holding consists of land to which Sch 5 (as amended) applies (see PARA 455 note 7 ante), no such compensation is payable: s 33(1), Sch 5 para 14(4). As to terminal compensation in such a case see PARAS 458-461 ante. If only part of the holding consists of land to

which Sch 5 (as amended) applies, s 23 has effect in relation to the holding; but s 23(2), (4) applies as if that land did not form part of the holding, and any reference in s 23 to values computed in accordance with s 23(2)(a)-(c) is to be construed accordingly: Sch 5 para 14(5).

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C. ADDITIONAL COMPENSATION ON REOCCUPATION

471. Additional compensation on reoccupation of holding.

With a view to furthering the resumption of agriculture¹ on land² formerly comprised in a compulsory rights order³, a person is entitled to additional compensation⁴ in respect of a holding⁵ qualifying for compensation in respect of agricultural land if he is in occupation of the holding⁶ at the end of the period of occupation⁷ or if he enters into occupation⁸ of the holding at or after the end of that period, provided that he is occupying the holding, or enters into such occupation, wholly or mainly for the purposes of agriculture carried on by way of a trade or business⁹.

Such additional compensation is payable by the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order¹⁰ and subject to certain provisions¹¹, is an amount equal to the annual compensation payable in respect of that holding¹² for the last 12 months¹³ of the period of occupation¹⁴.

1 For the meaning of 'agriculture' see PARA 419 note 3 ante.

2 As to the meaning of 'land' see PARA 405 note 4 ante.

3 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

4 I.e. compensation under *ibid* s 23A (as added and amended): see s 23A(1) (as added: see note 8 infra).

5 I.e. a holding to which *ibid* s 21 (as amended) (see PARA 466 ante) applies: see s 23A(1) (as added: see note 8 infra). For the meaning of 'holding' see PARA 463 ante.

6 Where a compulsory rights order comprises the whole or part of a holding qualifying for compensation in respect of agricultural land (see note 5 supra), and at the end of the period of occupation one person is entitled to occupy part and another person to occupy another part of that holding, each of those parts is to be treated for the purposes of *ibid* s 23A (as added and amended) as if it were a separate holding so qualifying for compensation: s 34, Sch 6 para 4A (added by the Coal Industry Act 1975 s 6(3)).

7 For the meaning of 'the period of occupation' see PARA 424 ante.

8 The additional compensation on reoccupation is not payable to a person unless he is either (1) the person who, immediately before the operative date (for the meaning of which see PARA 423 text to note 1 ante) of the compulsory rights order, was entitled to occupy the holding (referred to in the Opencast Coal Act 1958 s 23A(2) (as added) as 'the original occupier'); or (2) a person who, before the end of the period of occupation, became entitled to the relevant interest in the holding in accordance with the disposition of the original occupier's estate effected by his will or codicil, or by intestacy, or by a combination of his will or codicil and intestacy: s 23A(2), (3) (s 23A added by the Coal Industry Act 1975 s 6(1)). For this purpose, 'the relevant interest' means the interest by which the person in question became entitled to occupy the holding, or would have become so entitled if the compulsory rights order had not been made; and 'will' includes a codicil: Opencast Coal Act 1958 s 23A(3) (as so added). See also PARA 478 note 6 post.

9 *Ibid* s 23A(1) (as added: see note 8 supra).

10 As to the payment of compensation see PARA 503 post.

11 I.e. subject to the provisions of the Opencast Coal Act 1958 s 23A(5)-(7) (as added and amended): see s 23A(4) (as added and amended: see note 14 infra).

12 le compensation payable under *ibid* s 17 (as amended) (see PARA 465 ante): see s 23A(4) (as added and amended: see note 14 *infra*).

Where the person entitled, immediately after the end of the period of occupation, to occupy the holding ceases, before he enters into occupation, to be entitled to occupy some part of it, his entry into the part which he remains entitled to occupy is to be treated for the purposes of s 23A(1) (as added) as entry into occupation of the holding (s 23A(6)(a) (as so added)), but the additional compensation payable to him on reoccupation is such proportion of the compensation which would have been payable had he remained entitled to enter into occupation of the whole of the holding as is properly attributable to the part which he remains entitled to occupy (s 23A(6)(b) (as so added)). Where these provisions apply and, immediately before the end of the period of occupation, only part of the holding concerned (called 'the compensatable portion') was comprised in the compulsory rights order, then (1) if the part of the holding which the person concerned ceased to be entitled to occupy comprises the whole of the compensatable portion, no additional compensation on reoccupation is payable to him (s 23A(7)(a) (as so added)); (2) if the person concerned remains entitled to occupy the whole of the compensatable portion, such additional compensation payable to him is not to be reduced under s 23A(6) (b) (as added) (s 23A(7)(b) (as so added)); and (3) in any other case, for the purpose of determining the proportion of the compensation properly attributable to any part of the holding under s 23A(6)(b) (as added), the holding is to be treated as consisting of the compensatable portion only (s 23A(7)(c) (as so added)).

13 Subject to the provisions of *ibid* s 23A(6), (7) (as added), in any case where the compensation last payable in respect of a holding under s 17 (as amended) was in fact payable by reference to a period of less than 12 months, the compensation payable in respect of that holding by virtue of s 23A (as added and amended) is an amount equal to the compensation which was so payable under s 17 (as amended) multiplied by the fraction of which the numerator is 365 and the denominator is the number of days in the period by reference to which the compensation was so payable under that section: s 23A(5) (as added (see note 8 *supra*); and amended by the Coal Industry Act 1994 s 52(2), Sch 8 paras 1, 19(1)).

14 Opencast Coal Act 1958 s 23A(4) (as added (see note 8 *supra*); and amended by the Coal Industry Act 1994 Sch 8 paras 1, 19(1)). The Opencast Coal Act 1958 s 23A(4), (5) (as added and amended) does not apply in relation to any compulsory rights order confirmed before the restructuring date (ie 31 October 1994: see PARA 3 note 9 ante): see the Coal Industry Act 1994 Sch 8 para 19(1), (2).

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D. TENANTS' RIGHTS

472. Compensation for long-term improvements etc in relation to agricultural holdings.

Special provisions apply where the land¹ comprised in a compulsory rights order² consists of or includes land ('the tenant's land') which, immediately before the date of entry³, constituted or formed part of an agricultural holding held under a tenancy in relation to which the Agricultural Holdings Act 1986 applies⁴, and which is land on which, before that date, there had been carried out long-term improvements⁵ qualifying for compensation under that Act⁶, or there had been adopted a special system of farming so qualifying⁷ for compensation⁸.

If at the end of the period of occupation⁹ the tenant's land has lost the benefit¹⁰ of any of the improvements, or of the special system of farming, and that land is subject to the same tenancy as immediately before the date of entry, or is subject to a subsequent tenancy¹¹ under which the tenant has retained or succeeded to the relevant right to compensation, and the tenancy under which that land is then held continues after the end of the period of occupation, the provisions of the Agricultural Holdings Act 1986 as to compensation for long-term improvements¹² and for a special system of farming¹³ apply subject to modification¹⁴. In such a case, deductions may fall to be made from the compensation in question¹⁵.

1 As to the meaning of 'land' see PARA 405 note 4 ante.

2 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

3 For the meaning of 'the date of entry' see PARAS 424 note 1, 434 note 2 ante.

4 Opencast Coal Act 1958 s 24(1)(a) (amended by the Agricultural Tenancies Act 1995 s 40, Schedule para 15(1), (2)). For the meaning of 'agricultural holding' see PARA 419 note 3 ante.

5 'Long-term improvement' means any improvement of a description specified in the Agricultural Holdings Act 1986 s 64(4), Sch 7 Pt I or Pt II (see AGRICULTURAL LAND vol 1 (2008) PARA 432): Opencast Coal Act 1958 s 24(9) (amended by the Agricultural Holdings Act 1986 s 100, Sch 14 para 26).

6 Any reference to long-term improvements qualifying for compensation under the Agricultural Holdings Act 1986 is a reference to long-term improvements in respect of which, immediately before the date of entry, a tenant of the agricultural holding in question had a prospective right to compensation under that Act on quitting the holding on the termination of his tenancy: Opencast Coal Act 1958 s 24(7)(a) (amended by the Agricultural Holdings Act 1986 Sch 14 para 26). For the meaning of 'termination' see PARA 446 note 10 ante. In determining whether the conditions specified in the Opencast Coal Act 1958 s 24(7)(a) (as amended) or s 24(7)(b) (as amended) are fulfilled, no account is to be taken of any provision of the Agricultural Holdings Act 1986 by which a right to compensation is conditional on the making of a claim or the giving of notice of intention to claim, or is liable to be affected by the service of a notice by the landlord: Opencast Coal Act 1958 s 24(8) (amended by the Agricultural Holdings Act 1986 Sch 14 para 26). As to adjustments between landlords and tenants see PARA 437 et seq ante.

The references to the Agricultural Holdings Act 1986 in the Opencast Coal Act 1958 s 24(8) (as amended) include references to the Agricultural Holdings Act 1948 (repealed): Opencast Coal Act 1958 s 24(9A) (added by the Agricultural Holdings Act 1986 Sch 14 para 26).

7 Any reference to a special system of farming (as to which see AGRICULTURAL LAND vol 1 (2008) PARAS 451-452) qualifying for compensation under the Agricultural Holdings Act 1986 is a reference to a system of farming

in respect of which, immediately before the date of entry, a tenant of the agricultural holding in question had a prospective right to compensation under s 70 on quitting the holding on the termination of his tenancy: Opencast Coal Act 1958 s 24(7)(b) (amended by the Agricultural Holdings Act 1986 Sch 14 para 26). See also note 6 supra.

The references to the Agricultural Holdings Act 1986 in the Opencast Coal Act 1958 s 24(7) (as amended) include references to the Agricultural Holdings Act 1948 (repealed): Opencast Coal Act 1958 s 24(9A) (added by the Agricultural Holdings Act 1986 Sch 14 para 26). The reference to the Agricultural Holdings Act 1986 s 70 in the Opencast Coal Act 1958 s 24(7)(b) (as amended) includes a reference to the Agricultural Holdings Act 1948 s 56 (repealed): Opencast Coal Act 1958 s 24(9A) (as so added).

8 Ibid s 24(1)(b) (amended by the Agricultural Holdings Act 1986 Sch 14 para 26). The references to the Agricultural Holdings Act 1986 in the Opencast Coal Act 1958 s 24(1)(b) (as amended) include references to the Agricultural Holdings Act 1948 (repealed): Opencast Coal Act 1958 s 24(9A) (as added: see note 7 supra).

9 For the meaning of 'the period of occupation' see PARA 424 ante.

10 The tenant's land is to be taken to have lost the benefit of a long-term improvement if that benefit has been lost, wholly or in part, without being replaced by another long-term improvement of comparable benefit to the land (Opencast Coal Act 1958 s 24(4)(a)); and the land is to be taken to have lost the benefit of a special system of farming if the increased value attributable to that system has been lost, wholly or in part, without being regained by the continuous adoption of a system of comparable benefit to the land (s 24(4)(b)).

11 The tenant's land is taken to be subject to such a subsequent tenancy if either (1) by virtue of the Agricultural Holdings Act 1986 s 69(1) or Sch 9 para 5(1) (which relate respectively to improvements made during one of a series of tenancies) (see AGRICULTURAL LAND vol 1 (2008) PARA 434), the same tenant would have the like right to compensation in right of the subsequent tenancy as he would have had in right of the previous tenancy (Opencast Coal Act 1958 s 24(5)(a) (amended by the Agricultural Holdings Act 1986 Sch 14 para 26)); or (2) by virtue of the Agricultural Holdings Act 1986 s 69(2), s 69(3) or Sch 9 Pt I para 5(2) (which relate respectively to improvements paid for by an incoming tenant) (see AGRICULTURAL LAND vol 1 (2008) PARA 434), the tenant under the subsequent tenancy would have the like right to compensation as the tenant would have had under the previous tenancy (Opencast Coal Act 1958 s 24(5)(b) (amended by the Agricultural Holdings Act 1986 Sch 14 para 26)).

12 See AGRICULTURAL LAND vol 1 (2008) PARA 436 et seq. The provisions of the Agricultural Holdings Act 1986 referred to in the Opencast Coal Act 1958 s 24(2) (as amended) are taken to include any provisions of the Agricultural Holdings Act 1986 as to the making of claims for any such compensation as is mentioned in the Opencast Coal Act 1958 s 24(2) (as amended), as to the calculation of any such compensation and the settlement or determination of such claims, as to the recovery of any such compensation, and as to any other matters incidental to it (s 24(6) (amended by the Agricultural Holdings Act 1986 Sch 14 para 26)); provided that any provisions of the Agricultural Holdings Act 1986 as to the giving of notice of intention to make a claim applies with the modification that the time for giving such a notice is any time not later than three months after the end of the period of occupation; and s 83(4) (which relates to the time for settling such claims) applies with the substitution, for the reference to eight months from the termination of the tenancy, of a reference to eight months from the end of the period of occupation: Opencast Coal Act 1958 s 24(6) proviso (amended by the Agricultural Holdings Act 1984 s 10(1), Sch 3 para 29).

13 See AGRICULTURAL LAND vol 1 (2008) PARAS 451-452.

14 Opencast Coal Act 1958 s 24(2) (amended by the Agricultural Holdings Act 1986 Sch 14 para 26). The provisions of the Agricultural Holdings Act 1986 referred to in the text apply as if (1) the tenant's land were in the state (see PARA 453 note 4 ante) in which it was immediately before the date of entry (Opencast Coal Act 1958 s 24(3)(a) (amended by the Agricultural Holdings Act 1986 Sch 14 para 26)); and (2) the tenancy under which that land is held at the end of the period of occupation had terminated immediately after the end of that period and the tenant had then quitted the holding (Opencast Coal Act 1958 s 24(3)(b) (as so amended)).

If, however, in a case where long-term improvements qualifying for compensation under the Agricultural Holdings Act 1986 had been carried out on the tenant's land, if the tenant's land has lost the benefit (see note 10 supra) of some of those improvements, but has not lost the benefit of all of them, the provisions of the Agricultural Holdings Act 1986 referred to in the text apply as mentioned in the Opencast Coal Act 1958 s 24(3) (a), (b) (as amended), but as if the improvements of which the tenant's land has not lost the benefit had not been long-term improvements qualifying for compensation under the Agricultural Holdings Act 1986: Opencast Coal Act 1958 s 24(3) proviso (as so amended).

The references to compensation under the Agricultural Holdings Act 1986 in the Opencast Coal Act 1958 s 24(3) (as amended) include references to the Agricultural Holdings Act 1948 (repealed): Opencast Coal Act 1958 s 24(9A) (added by the Agricultural Holdings Act 1986 Sch 14 para 26).

15 See PARA 473 post.

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473. Deductions from compensation in relation to agricultural holdings.

Where a tenant of an agricultural holding¹ is entitled to compensation² in respect of land³ constituting or forming part of that holding, there must be deducted from the amount of that compensation⁴, the amount of any compensation which would have been recoverable from the tenant by the landlord in respect of compensation for dilapidation, deterioration or damage for which the tenant is responsible⁵, or in respect of compensation for general reduction in the value of the holding due to the tenant's failure to fulfil his responsibilities⁶, if the tenancy⁷ under which that land was held immediately before the date of entry⁸ had terminated immediately before that date and the tenant had then quitted the holding on the termination of his tenancy⁹.

1 For the meaning of 'agricultural holding' see PARA 419 note 3 ante.

2 I.e. compensation under the Opencast Coal Act 1958 s 24 (as amended) (see PARA 472 ante): see s 25(1) (as amended: see note 9 infra).

3 As to the meaning of 'land' see PARA 405 note 4 ante.

4 I.e. calculated apart from the Opencast Coal Act 1958 s 25(1) (as amended).

5 I.e. under the Agricultural Holdings Act 1986 s 71: see AGRICULTURAL LAND vol 1 (2008) PARAS 456-457.

6 I.e. under ibid s 72: see AGRICULTURAL LAND vol 1 (2008) PARAS 460-462.

7 For the meaning of 'tenancy' see PARA 435 note 3 ante.

8 For the meaning of 'the date of entry' see PARAS 424 note 1, 434 note 2 ante.

9 Opencast Coal Act 1958 s 25(1) (amended by the Agricultural Holdings Act 1986 s 100, Sch 14 para 27).

For this purpose (1) no account is to be taken of any dilapidation or deterioration of, or damage to, any part of the holding which was not comprised in the compulsory rights order, or of any reduction in the value of any such part of the holding (Opencast Coal Act 1958 s 25(1) proviso); and (2) any provision of the Agricultural Holdings Act 1986, whereby any right to compensation is conditional upon the making of a claim, or the giving of notice of intention to make a claim, is to be disregarded (Opencast Coal Act 1958 s 25(2) (amended by the Agricultural Holdings Act 1986 Sch 14 para 27)).

In the Opencast Coal Act 1958 s 25 (as amended) references to the Agricultural Holdings Act 1986 and to ss 71, 72 include respectively references to the Agricultural Holdings Act 1948 and to ss 57, 58 (repealed): Opencast Coal Act 1958 s 25(2A) (added by the Agricultural Holdings Act 1986 Sch 14 para 27).

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E. COMPENSATION FOR SHORT-TERM AGRICULTURAL IMPROVEMENTS

474. Provisions as to compensation.

Where, in the exercise of rights conferred by a compulsory rights order¹, any person occupies any land² which, immediately before the date of entry³, was agricultural land⁴ and was not comprised in a farm business tenancy⁵, compensation is payable⁶ by that person in respect of any improvements⁷ or other such matters⁸ in relation to that land⁹.

Compensation is not payable¹⁰ where a person's occupation of any land, in exercise of rights conferred by a compulsory rights order, is confined to replacing in occupation a person previously entitled to exercise the rights conferred by that order¹¹.

Where such compensation is payable in respect of any improvements or other matters, the compensation is to be of an amount equal to the amount of the compensation which would have been payable in respect of those improvements or matters under the Agricultural Holdings Act 1986¹² if: (1) where the land in question did not form part of an agricultural holding immediately before that date of entry, it had formed part of such a holding immediately before that date¹³; and (2) in any case, the tenancy of the agricultural holding comprising that land had terminated on the date of entry and the tenant had then quitted the holding¹⁴.

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

2 As to the meaning of 'land' see PARA 405 note 4 ante.

3 For the meaning of 'the date of entry' see PARAS 424 note 1, 434 note 2 ante.

4 For the meaning of 'agricultural land' see PARA 431 note 4 ante.

5 For the meaning of 'farm business tenancy' see PARA 420 note 7 ante.

6 The person entitled to any compensation so payable in the case of land which, immediately before the date of entry, was occupied by a tenant, is that tenant (Opencast Coal Act 1958 s 26(4)(a)); and in any other case, is the person who was the owner of the land immediately before the date of entry (s 26(4)(b)). For the meaning of 'owner' see PARA 412 note 4 ante.

7 See *ibid* s 26(2)(a). The improvements referred to in the text are those of the following descriptions which had been carried out on the land before the date of entry: mole drainage and works to secure its efficient functioning; protection of fruit trees against animals; chalking of land; clay burning; liming of land; application to land of purchased (including artificial) manure; and consumption on the land of corn (whether or not produced there) or of cake or other feeding stuff not produced there, by horses, cattle, sheep or pigs, or by poultry folded on the land as part of a system of farming practised there: s 26(2)(a), Sch 4 Pt I.

If, by virtue of the power conferred by the Agricultural Holdings Act 1986 s 91, the provisions of Sch 8 are varied, the Secretary of State may by order make such corresponding variations in the provisions of the Opencast Coal Act 1958 Sch 4 Pts I, II, III as he may consider appropriate: s 26(5) (amended by the Agricultural Holdings Act 1986 s 100, Sch 14 para 28). See also PARA 477 note 8 post. As to the Secretary of State see PARA 4 ante.

8 *Ie* matters of the following descriptions which applied to the land immediately before the date of entry: growing crops, and severed or harvested crops and produce, grown on the land in the year ending with that date; seeds sown and cultivations, fallows and acts of husbandry performed there at the tenant's expense; pasture laid down with clover, grass, lucerne, sainfoin or other seeds, being either pasture paid for by the

tenant on entering on the land or laid down at his expense otherwise than under an obligation imposed on him by written agreement to lay it down to replace temporary pasture which was there when he entered on the land and for which he did not pay; and acclimatisation, hefting or settlement of hill sheep on hill land: Opencast Coal Act 1958 s 26(2)(b), Sch 4 Pt II. If immediately before the date of entry the land was not occupied by the tenant these descriptions are modified by omitting, in the description of seeds sown, the reference to the tenant's expense, and, in the description of pasture, the words 'being either' to the end of that description: s 26(2) proviso, Sch 4 Pt III.

9 Ibid s 26(1) (amended by the Coal Industry Act 1994 s 52(2), Sch 8 para 20(1); and the Agricultural Tenancies Act 1995 s 40, Schedule para 17(2)).

10 Ie by virtue of the Opencast Coal Act 1958 s 26 (as amended): see s 26(1A) (as added: see note 11 infra).

11 Ibid s 26(1A) (added by the Coal Industry Act 1994 Sch 8 para 20(2)).

12 As to such compensation see AGRICULTURAL LAND vol 1 (2008) PARAS 437, 442.

13 Opencast Coal Act 1958 s 26(3)(a) (s 26(3)(a), (b) amended by the Coal Industry Act 1994 s 67(8), Sch 8 para 20(3), Sch 11 Pt II; and the Agricultural Holdings Act 1986 Sch 14 para 28). For the meaning of 'agricultural holding' see PARA 419 note 3 ante.

14 Opencast Coal Act 1958 s 26(3)(b) (as amended: see note 13 supra). The reference in s 26(3) (as amended) to the Agricultural Holdings Act 1986 includes a reference to the Agricultural Holdings Act 1948 (repealed): Opencast Coal Act 1958 s 26(5A) (added by the Agricultural Holdings Act 1986 Sch 14 para 28).

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475. Terminal compensation.

The provisions of the Opencast Coal Act 1958 relating to terminal compensation¹ apply, with modifications², where compensation for short-term agricultural improvements and related matters³ is payable, and the land in relation to which that compensation is payable constitutes or forms part of a holding qualifying for annual compensation under the Act⁴.

1 Ie the Opencast Coal Act 1958 ss 21-23 (as amended): see PARA 466 et seq ante.

2 The modifications are that *ibid* s 22 applies as if any reference to the condition in which the land was immediately before the date of entry were, where applicable, a reference to the condition in which that land would have been, immediately before that date, if the improvements or other matters in question had not been carried out, or had not applied to that land (s 34, Sch 6 para 16(2)); and that s 23 applies as if, for the value mentioned in s 23(2)(c), there were substituted the value (computed as prescribed in s 23(4)) which, at the end of the period of occupation, a freehold interest in the holding would have if (1) those improvements or other matters had not been carried out, or had not applied to the land in question (Sch 6 para 16(3)(a), (4)); but (2) in all other respects the entirety of the holding were in the state in which it was immediately before the date of entry (Sch 6 para 16(3)(b), (4)).

3 Ie compensation under *ibid* s 26 (as amended): see PARA 474 ante.

4 *Ibid* Sch 6 para 16(1). The holding referred to is one to which s 21 (as amended) applies: see PARA 466 note 2 ante.

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476. Farm business tenancies: tenant's right to compensation for improvements etc.

Where (1) any part of the land¹ comprised in a compulsory rights order² was held, immediately before the date of entry³, under a farm business tenancy⁴; (2) there have been provided in relation to the land which is both so comprised and so held ('the tenant's land') tenant's improvements⁵ in respect of which, immediately before that date, the tenant had a prospective right to compensation⁶ on quitting the holding⁷ on the termination⁸ of the tenancy⁹; (3) at the end of the period of occupation¹⁰, the tenant's land has lost the benefit of any such improvement¹¹; and (4) immediately after the end of that period, the tenant's land is comprised in the same tenancy as immediately before the date of entry, or is comprised in a subsequent farm business tenancy at the end of which the tenant is not deprived¹², of his right to compensation¹³ in respect of any tenant's improvement¹⁴ provided during the earlier tenancy in relation to the tenant's land¹⁵, the Agricultural Tenancies Act 1995¹⁶ applies¹⁷ as if the tenant's land were in the state in which it was immediately before the date of entry, and the tenancy under which that land is held at the end of the period of occupation had terminated immediately after the end of that period and the tenant had then quitted the holding¹⁸.

1 As to the meaning of 'land' see PARA 405 note 4 ante.

2 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

3 For the meaning of 'the date of entry' see PARAS 424 note 1, 434 note 2 ante.

4 Opencast Coal Act 1958 s 25A(1)(a) (s 25A added by the Agricultural Tenancies Act 1995 s 40, Schedule para 16). For the meaning of 'farm business tenancy' see PARA 420 note 7 ante.

5 In the Opencast Coal Act 1958 s 25A (as added), 'tenant's improvement' has the same meaning as in the Agricultural Tenancies Act 1995 s 15 (see AGRICULTURAL LAND vol 1 (2008) PARA 310): Opencast Coal Act 1958 s 25A(6) (as added: see note 4 supra).

6 I.e. compensation under the Agricultural Tenancies Act 1995 s 16 (see AGRICULTURAL LAND vol 1 (2008) PARA 311): see the Opencast Coal Act 1958 s 25A(1)(b) (as added: see note 4 supra).

7 In *ibid* s 25A (as added), 'holding', in relation to a farm business tenancy, has the same meaning as in the Agricultural Tenancies Act 1995 s 38(1) (see AGRICULTURAL LAND vol 1 (2008) PARA 302): Opencast Coal Act 1958 s 25A(6) (as added: see note 4 supra).

8 In *ibid* s 25A (as added), 'termination', in relation to a tenancy, has the same meaning as in the Agricultural Tenancies Act 1995 s 38(1) (see AGRICULTURAL LAND vol 1 (2008) PARA 305): Opencast Coal Act 1958 s 25A(6) (as added: see note 4 supra).

9 *Ibid* s 25A(1)(b) (as added: see note 4 supra).

10 For the meaning of 'the period of occupation' see PARA 424 ante.

11 Opencast Coal Act 1958 s 25A(1)(c) (as added: see note 4 supra).

12 I.e. by virtue of the Agricultural Tenancies Act 1995 s 23(3) (see AGRICULTURAL LAND vol 1 (2008) PARA 315): see the Opencast Coal Act 1958 s 25A(1)(d) (as added: see note 4 supra). For the purposes of s 25A(1) (as added), the Agricultural Tenancies Act 1995 s 22(2) (which requires notice to be given of the intention to make

a claim: see AGRICULTURAL LAND vol 1 (2008) PARA 318) is disregarded: Opencast Coal Act 1958 s 25A(2) (as added: see note 4 supra).

For the purposes of s 25A(1), (4) (as added), the tenant's land is taken to have lost the benefit of a tenant's improvement if the benefit of that improvement has been lost, wholly or in part, without being replaced by another improvement of comparable benefit to the land: s 25A(5) (as added: see note 4 supra).

13 Ie compensation under the Agricultural Tenancies Act 1995 s 16 (see AGRICULTURAL LAND vol 1 (2008) PARA 311): see the Opencast Coal Act 1958 s 25A(1)(d) (as added: see note 4 supra).

14 In ibid s 25A (as added), references to the provision of a tenant's improvement have the same meaning as in the Agricultural Tenancies Act 1995 s 15 (see AGRICULTURAL LAND vol 1 (2008) PARA 311): Opencast Coal Act 1958 s 25A(6) (as added: see note 4 supra).

15 Ibid s 25A(1)(d) (as added: see note 4 supra).

16 Ie the Agricultural Tenancies Act 1995 Pt III (ss 15-27) (see AGRICULTURAL LAND vol 1 (2008) PARA 310 et seq): see the Opencast Coal Act 1958 s 25A(3) (as added: see note 4 supra).

17 Ie subject to ibid s 25A(4) (as added), which provides that where the tenant's land has lost the benefit of some tenant's improvements but has not lost the benefit of all of them, the Agricultural Tenancies Act 1995 Pt III applies as mentioned in the Opencast Coal Act 1958 s 25A(3) (as added), but as if the improvements of which the tenant's land has not lost the benefit had not been tenant's improvements (see s 25A(4) (as added: see note 4 supra)).

18 Ibid s 25A(3) (as added: see note 4 supra).

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F. MARKET GARDENS

477. Compensation for short-term improvements etc.

Where the land¹ comprised in a compulsory rights order² consists of or includes land which, immediately before the date of entry³, was agricultural land⁴ used as a market garden⁵, and was not comprised in a farm business tenancy⁶, the provisions of the Opencast Coal Act 1958 in respect of compensation for short-term improvements and related matters⁷ have effect, subject to modifications⁸ in relation to that land⁹.

1 As to the meaning of 'land' see PARA 405 note 4 ante.

2 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

3 For the meaning of 'the date of entry' see PARAS 424 note 1, 434 note 2 ante.

4 For the meaning of 'agricultural land' see PARA 431 note 4 ante.

5 'Market garden' is not defined in the Opencast Coal Act 1958; see, however, AGRICULTURAL LAND vol 1 (2008) PARA 324.

6 Ibid s 28(1) (amended by the Agricultural Tenancies Act 1995 s 40, Schedule para 18(2)). For the meaning of 'farm business tenancy' see PARA 420 note 7 ante.

7 Ie the provisions of the Opencast Coal Act 1958 s 26 (as amended) (see PARA 474 ante): see s 28(2).

8 Unless, immediately before the date of entry, the land was occupied by a tenant, ibid s 26 (as amended) has effect as if the following descriptions of improvements were included among those specified in Sch 4 Pt I (see PARA 474 note 7 ante): planting of standard or other fruit trees or fruit bushes permanently set out, or of strawberry plants, or of asparagus, rhubarb and other vegetable crops which continue productive for two years or more; and the erection, alteration or enlargement of buildings for the purpose of the trade or business of a market gardener: s 28(2), Sch 4 Pt VI.

Where the land in question, immediately before the date of entry, was occupied by a tenant, s 28(2) does not apply to any improvements of a description specified in Sch 4 Pt VI unless they are improvements in respect of which the Agricultural Holdings Act 1986 s 79(2)-(5) (which relates to market gardens) (see AGRICULTURAL LAND vol 1 (2008) PARA 464 et seq) has effect, whether by virtue of an agreement or of a direction given under s 80(2): Opencast Coal Act 1958 s 28(3) (amended by the Agricultural Holdings Act 1986 s 100, Sch 14 para 30).

If, by virtue of the power conferred by the Agricultural Holdings Act 1986 s 91, the provisions of Sch 10 are varied, the Secretary of State may by order make such corresponding variations in the provisions of the Opencast Coal Act 1958 Sch 4 Pt VI as he may consider appropriate: s 28(5) (amended by the Agricultural Holdings Act 1986 Sch 14 para 30). As to the Secretary of State see PARA 4 ante.

9 Opencast Coal Act 1958 s 28(1), (2). In relation to land falling within s 28(1), any reference in the preceding provisions of Pt II (ss 17-36) (as amended) to rights under the Agricultural Holdings Act 1986 s 10 (see AGRICULTURAL LAND vol 1 (2008) PARA 336) includes a reference to rights under s 10 as extended by s 79(3) (see AGRICULTURAL LAND vol 1 (2008) PARA 468): Opencast Coal Act 1958 s 28(4) (amended by the Agricultural Holdings Act 1986 Sch 14 para 30).

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G. FORCED SALE COMPENSATION

478. Compensation for loss in respect of a forced sale.

Where, in consequence of the confirmation of a compulsory rights order¹, a person incurs a loss in respect of a forced sale of any property consisting of: (1) livestock, vehicles, plant, equipment or other chattels which are kept on a holding², or which are used for the purposes of such a holding; or (2) a fixture or building, not falling within head (1) above, which he has removed from such a holding³, he is entitled⁴ to compensation from the person on whose application the compulsory rights order was made of an amount equal to that loss⁵.

This does not apply except where the person incurring the loss is the person who is for the time being entitled to occupy so much of the holding as is comprised in the order, or would be entitled for the time being to occupy it if the order had not been made⁶.

Where, in the case of any sale in respect of which compensation is payable⁷, a person other than the person who applied for the order is entitled, on the effective date⁸ of the sale, to the rights conferred by the compulsory rights order, that compensation is payable by the person entitled to those rights, instead of by the person who applied for the order⁹.

A person is not entitled to such compensation in respect of a forced sale unless he has given to the person potentially liable¹⁰ not less than ten days' notice¹¹ of the intended sale, and has, before the sale, afforded to the person to whom the notice was given, or any person designated for the purpose by him, reasonable facilities to inspect the property intended to be sold, in so far as he was in a position to afford such facilities¹².

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

2 Ie a holding to which, when the order becomes operative, ibid s 17 (as amended) applies: see s 27(1) (as amended: see note 5 infra).

3 Ie in pursuance of the Agricultural Holdings Act 1986 s 10 (see AGRICULTURAL LAND vol 1 (2008) PARA 336): see the Opencast Coal Act 1958 s 27(1) (as amended: see note 5 infra).

4 Ie subject to the provisions of ibid s 27(2)-(5) (as amended): see s 27(1) (as amended: see note 5 infra).

5 Ibid s 27(1) (amended by the Agricultural Holdings Act 1986 s 100, Sch 14 para 29; and the Coal Industry Act 1994 s 52(2), Sch 8 para 21(1)).

6 Opencast Coal Act 1958 s 27(2). In relation to land comprised in a compulsory rights order, any reference to the person who would be entitled to occupy that land if the order had not been made is to be construed, in relation to any time before the date of entry as a reference to the person who is for the time being entitled to occupy that land: s 51(8). For the meaning of 'the date of entry' see PARAS 424 note 1, 434 note 2 ante.

7 Ie compensation payable under ibid s 27 (as amended): s 27(2A) (as added: see note 9 infra).

8 'Effective date', in relation to a sale, means the date on which the property sold becomes the property of the purchaser: ibid s 27(5) (added by the Coal Industry Act 1994 Sch 8 para 21(2), (4)).

9 Opencast Coal Act 1958 s 27(2A) (added by the Coal Industry Act 1994 Sch 8 para 21(2), (4)).

10 'The person potentially liable', in relation to a notice relating to a sale, means the person on whom the liability to pay the compensation will fall on the effective date of the sale if the person entitled to the rights conferred by the compulsory rights order in question does not change before that date: Opencast Coal Act 1958 s 27(5) (as added: see note 8 *supra*).

11 As to the giving of notices see PARA 413 *ante*.

12 Opencast Coal Act 1958 s 27(3) (amended by the Coal Industry Act 1994 Sch 8 para 21(3)).

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(iv) Non-Agricultural Land

479. Meaning of 'holding'.

Where land¹, immediately before the operative date² of a compulsory rights order³, was occupied as a unit, but was not so occupied wholly or mainly for the purposes of agriculture⁴ carried on by way of a trade or business, the entirety of that land (excluding the coal⁵ and any other minerals⁶ vested in the Coal Authority⁷ or any licensed operator⁸) constitutes a holding to which the compensation provisions of the Opencast Coal Act 1958 relating to non-agricultural land⁹ apply¹⁰.

1 As to the meaning of 'land' see PARA 405 note 4 ante.

2 For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

3 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

4 For the meaning of 'agriculture' see PARA 419 note 3 ante. See also *ibid* s 17(2) (as amended); and PARA 463 ante.

5 For the meaning of 'coal' see PARA 405 note 5 ante.

6 As to the meaning of 'minerals' see PARA 12 note 22 ante.

7 As to the Coal Authority see PARA 52 et seq ante.

8 I.e. a 'licensed operator' within the meaning of the Coal Industry Act 1994 (see PARA 60 note 12 ante): see the Opencast Coal Act 1958 s 29(1) (as amended: see note 10 *infra*).

9 I.e. the provisions of *ibid* s 29 (as amended) (see PARA 480 post): see s 29(1) (as amended: see note 10 *infra*).

10 *Ibid* s 29(1) (amended by the Coal Industry Act 1994 s 52(2), Sch 8 para 22(1)).

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480. Types of compensation payable.

Annual compensation¹, and compensation in respect of forced sales² are payable by and to the same persons³ and in the same manner as in the case of agricultural land⁴. Terminal compensation⁵ is also payable as in the case of agricultural land⁶, but special rules apply to compensation for non-agricultural tenants' improvements⁷.

1 Ie compensation payable under the Opencast Coal Act 1958 s 17 (as amended) or s 18 (as substituted): see PARA 465 ante.

2 Ie compensation payable under ibid s 27 (as amended): see PARA 478 ante. For this purpose the provisions of s 27 (as amended) have effect as if in s 27(1)(b) (as amended) for the reference to such a fixture or building as is there mentioned there were substituted a reference to any trade or other fixture (not falling within s 27(1) (a) (as amended)) which the person in question has lawfully removed from the holding: s 29(2) proviso.

3 Ibid s 17(3)-(3B) (s 17(3) as amended and s 17(3A), (3B) as added) (see PARA 464 ante); applied by s 29(2) (amended by the Coal Industry Act 1994 s 52(2), Sch 8 paras 1, 22(2)).

4 Opencast Coal Act 1958 s 17(1) (as amended); s 17(1A) (as added); s 17(3)-(3B) (s 17(3) as amended and s 17(3A), (3B) as added); s 18 (as substituted); s 27 (as amended); applied by s 29(2) (as amended: see note 3 supra). As to the application of s 29 (as amended) to the case of a holding held in divided ownership see s 34, Sch 6 paras 1-4 (as amended) (see PARAS 463 note 3, 466 note 2 ante); applied by Sch 6 para 5. As to the application of s 29 (as amended) to land the strata of which are in different ownership see s 33(1), Sch 5 para 15 (see PARAS 463 note 7, 466 note 2 ante). See also Sch 5 para 14(1), (2) (see PARA 463 note 7 ante), Sch 6 para 11.

5 Ie compensation under ibid ss 21-23 (as amended): see PARA 466 et seq ante.

6 Ibid s 21(1) (as amended); ss 21(3), 22, 23; applied by s 29(3). The provisions of Sch 5 para 14(3)-(5) have effect for this purpose: Sch 5 para 14(6) (see PARAS 467 note 10, 470 note 10 ante). Where a compulsory rights order comprises the whole or part of a holding to which s 29 (as amended) applies, and after the end of the period of occupation the tenant carries out improvements, and, in respect of expenses incurred in carrying out those improvements, is entitled to compensation under s 22 as applied by s 29 (as amended), those improvements are to be treated for the purposes of the Landlord and Tenant Act 1927 and of the Landlord and Tenant Act 1954 Pt II (ss 23-46) (as amended) as if they had been carried out by the landlord: Opencast Coal Act 1958 s 37, Sch 7 para 10. The provisions of the Opencast Coal Act 1958 relating to additional compensation do not have effect on or after the restructuring date (ie 31 October 1994: see PARA 3 note 9 ante): see PARA 465 note 5 ante.

7 See PARA 481 post.

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481. Compensation for non-agricultural tenants' improvements.

Where the land¹ comprised in a compulsory rights order² consists of or includes land ('the tenant's land') which, immediately before the date of entry³, constituted or formed part of a holding to which the provisions of the Landlord and Tenant Act 1927 relating to compensation for improvements and goodwill on the termination of business tenancies⁴ apply⁵ and which was land on which, before that date, there had been carried out improvements⁶ qualifying for compensation under that Act⁷, then if at the end of the period of occupation⁸ the land has lost the benefit⁹ of any of the improvements and is subject to the same tenancy¹⁰ as immediately before the date of entry, and that tenancy continues until after the end of the period of occupation, those provisions apply¹¹ on the basis of certain assumptions¹².

1 As to the meaning of 'land' see PARA 405 note 4 ante.

2 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

3 For the meaning of 'the date of entry' see PARAS 424 note 1, 434 note 2 ante.

4 Ie the Landlord and Tenant Act 1927 Pt I (ss 1-17) (as amended) (see LANDLORD AND TENANT): see the Opencast Coal Act 1958 s 30(1)(a).

5 Ibid s 30(1)(a).

6 'Improvement' includes the erection of a building: ibid s 30(8).

7 Ibid s 30(1)(b). The improvements referred to are those in respect of which, immediately before the date of entry, the tenant of the holding in question had a prospective right to compensation under the Landlord and Tenant Act 1927 on quitting the holding on the termination of his tenancy: Opencast Coal Act 1958 s 30(6). For the meaning of 'termination' see PARA 446 note 10 ante. In determining whether these conditions are fulfilled no account is to be taken of any provision in the Landlord and Tenant Act 1927 by which a right to compensation is conditional upon the making of a claim, or is liable to be affected by the service of a notice by the landlord: Opencast Coal Act 1958 s 30(7).

8 For the meaning of 'the period of occupation' see PARA 424 ante.

9 The land is taken to have lost the benefit of an improvement if the benefit of that improvement has been lost, wholly or in part, without being replaced by another improvement of comparable benefit to the land: Opencast Coal Act 1958 s 30(4).

10 For the meaning of 'tenancy' see PARA 435 note 3 ante.

11 Those provisions are to be taken to include any provisions of the Landlord and Tenant Act 1927 as to the making of claims, the calculation of compensation and the determination of claims, the recovery of compensation, and as to any other incidental matters (Opencast Coal Act 1958 s 30(5)), but the time for making a claim is not later than three months after the end of the period of occupation (s 30(5) proviso).

12 Ibid s 30(2). Thus the Landlord and Tenant Act 1927 applies as if (1) the land were in the state in which it was immediately before the date of entry (Opencast Coal Act 1958 s 30(3)(a)); (2) the tenancy under which that land is held at the end of the period of occupation had terminated immediately after the end of that period and the tenant had then quitted the holding (s 30(3)(b)); and (3) it were established that, after the termination of that tenancy, there was no intention to demolish or make structural alterations in any premises on the land or any part of such premises or to change the use of that land or any premises upon it (s 30(3)(c)). If the land has lost the benefit of some, but not all, of the improvements in question (see notes 7, 9 supra) the Landlord and Tenant Act 1927 applies as before described, but as if the improvements of which the land has not lost the

benefit had not been improvements qualifying for compensation under that Act: Opencast Coal Act 1958 s 30(3) proviso.

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(v) Compensation for Easements and Rights

482. In general.

Where, by reason of a compulsory rights order¹ or of anything done in the exercise of rights conferred by such an order, the exercise of an easement² or similar right³ over any land⁴ comprised in the order, or of any right restrictive of the use of any such land, is prevented or injuriously affected, annual⁵ and terminal⁶ compensation is payable in respect of it⁷.

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

2 An easement or other right consisting of such a right as is mentioned in *ibid* s 7(2) (as amended) or s 7(3) (as amended) (see PARA 429 ante) is, however, excepted from the application of s 31: s 31(1) proviso. As to easements generally see EASEMENTS AND PROFITS A PRENDRE. In two instances rights which are not strictly easements are notionally treated as such for the purpose of s 31(2) (as amended) (see PARA 483 post). These are (1) where the whole or part of the land comprised in a compulsory rights order is subject to a right of the kind mentioned in s 34, Sch 6 para 20(a) (as amended) (see PARA 494 post), and in any year in which that right subsists, being a year such as is mentioned in s 31(2) (as amended) (see PARA 483 post), the exercise of that right is prevented or injuriously affected by reason of the order or of anything done in the exercise of rights conferred by the order (Sch 6 para 23); and (2) where the whole or part of a holding to which s 17 (as amended) (see PARA 463 ante) applies consists of land occupied under a letting or licence approved under the Agricultural Holdings Act 1986 s 2 or the Agricultural Holdings Act 1948 s 2 (repealed) (see AGRICULTURAL LAND vol 1 (2008) PARA 327), and (a) by the agreement under which the land was let or the licence granted a right to use the land for specified purposes was reserved to the lessor or grantor (Opencast Coal Act 1958 Sch 6 para 25(a) (amended by the Agricultural Holdings Act 1986 s 100, Sch 14 para 32)); (b) the exercise of that right is prevented or injuriously affected by reason of the compulsory rights order or of anything done in the exercise of rights conferred by the order (Opencast Coal Act 1958 Sch 6 para 25(b) (as so amended)); and (c) that right does not constitute an easement or similar right (Sch 6 para 25(c) (as so amended)). As to the meaning of 'land' see PARA 405 note 4 ante.

3 For the meaning of 'similar right' see PARA 430 note 3 ante.

4 The provisions of the Opencast Coal Act 1958 s 44(1)-(4) (as amended) (which relate to Crown land: see PARAS 406, 422 note 7, 463 note 1 ante) apply, with necessary modifications, in relation to land which is subject to a right restricting its use, being a right the benefit of which is annexed to land in which there is a Crown or Duchy interest (for the meaning of which see PARA 406 note 2 ante) or, not being so annexed, belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belongs to the Duchy of Cornwall, or belongs to a government department, or is held in trust for Her Majesty for the purposes of a government department, as those provisions apply in relation to land in which there is a Crown or Duchy interest: s 44(5). Those provisions apply in particular as if s 44(1) proviso (as amended) were omitted, and as if in s 44(4)(a)-(d) (see PARA 411 note 8 ante) any reference to land belonging as therein mentioned were a reference to a right the benefit of which belongs, or is annexed to land belonging, as therein mentioned: s 44(5) proviso.

5 See PARA 483 post.

6 See PARA 484 post.

7 Opencast Coal Act 1958 s 31(1).

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483. Annual compensation.

For the year¹ beginning with the operative date² of the compulsory rights order³, and for each subsequent year which begins with an anniversary of that date and falls wholly or partly within the period of occupation⁴, the person for the time being entitled to the easement or right in question⁵ is entitled to compensation of an amount equal to the loss, if any, suffered by him by reason that the exercise of the easement or right is prevented or injuriously affected⁶.

1 For the meaning of 'year' see PARA 449 note 7 ante.

2 For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

3 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

4 For the meaning of 'the period of occupation' see PARA 424 ante.

5 As to easements generally see EASEMENTS AND PROFITS A PRENDRE. In relation to common or waste land the Secretary of State (as to whom see PARA 4 ante) may make regulations modifying the Opencast Coal Act 1958 s 31(1)-(4) (as amended) in order to secure an apportionment of compensation among the persons entitled: see s 31(5). At the date at which this volume states the law no such regulations had been made. As to regulation-making powers generally see PARA 409 ante.

6 Ibid s 31(2) (amended by the Coal Industry Act 1994 ss 52(2), 67(8), Sch 8 paras 1, 23(1), Sch 11 Pt II).

Subject (where different persons have been entitled to the rights for different parts of the year) to any apportionment under the Opencast Coal Act 1958 s 35(3) (see PARA 464 ante), the liability to pay compensation under s 31(2) (as amended) falls on the persons who, for the whole or any part of the year in question, have been entitled to the rights conferred by the order: s 31(2A) (added by the Coal Industry Act 1994 Sch 8 para 23(2)).

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484. Terminal compensation.

Where, after the end of the period of occupation¹, the exercise of the easement² or right continues to be prevented or injuriously affected by reason of anything done during that period in the exercise of rights conferred by the compulsory rights order³, terminal compensation is payable⁴.

If the easement or right is appurtenant to, or the benefit of it is in any other way annexed to, any land⁵, the owner⁶ of that land at the end of the period of occupation is entitled to compensation from the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order of an amount equal to the diminution, if any, in the value of that land⁷, in so far as the diminution is attributable to the fact that the exercise of the easement or right is prevented or injuriously affected⁸. In any other case, the person who at the end of that period is entitled to the right in question is entitled to compensation from the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order of an amount equal to the market value which the right would then have if its exercise were not prevented or affected, reduced by the amount of any market value which the right actually has at the end of that period⁹.

1 For the meaning of 'the period of occupation' see PARA 424 ante.

2 As to easements generally see EASEMENTS AND PROFITS A PRENDRE.

3 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

4 Ibid s 31(3) (amended by the Coal Industry Act 1994 s 52(2), Sch 8 paras 1, 23(3)). See also PARA 483 note 4 ante.

5 As to the meaning of 'land' see PARA 405 note 4 ante.

6 For the meaning of 'owner' see PARA 412 note 4 ante.

7 The value of the land is taken to have been diminished if, and to the extent to which, the value of a freehold interest in that land at the end of the period of occupation is less than the value which such an interest would then have if the land comprised in the order, over which the easement or right is exercisable, were in the state in which it was immediately before the date of entry; and for the purpose of computing those values the Opencast Coal Act 1958 s 23(4) (see PARA 470 note 4 ante) applies with the substitution, for references to the holding, of references to the land to which the benefit of the easement or right is annexed: s 31(4). For the meaning of 'the date of entry' see PARAS 424 note 1, 434 note 2 ante.

8 Ibid s 31(3)(a) (as amended: see note 4 supra).

9 Ibid s 31(3)(b) (as amended: see note 4 supra). Where property is of a kind not normally subject to sale in the open market, and compensation is to be assessed by reference to the value which the property would have if so sold, the Secretary of State may make regulations providing for the ascertainment of the value of the property: s 34, Sch 6 para 14. At the date at which this volume states the law no such regulations had been made. As to the Secretary of State see PARA 4 ante.

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(vi) Compensation for Depreciation of other Land

485. In general.

When a compulsory rights order¹ was made, and immediately before the operative date² of the order the person who was the owner³ of the whole or part of the land⁴ comprised in the order held an interest in other land not forming part of the land comprised in the order, or of any holding qualifying for compensation under the Opencast Coal Act 1958⁵, annual⁶ and terminal⁷ compensation is payable in respect of any depreciation in value of that other land⁸.

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

2 For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

3 For the meaning of 'owner' see PARA 412 note 4 ante.

4 As to the meaning of 'land' see PARA 405 note 4 ante.

5 The holding referred to is one to which the Opencast Coal Act 1958 s 17 (as amended) or s 29 (as amended) (see PARAS 463, 479 ante) applies: see s 32(1).

6 See PARA 486 post.

7 See PARA 487 post.

8 Opencast Coal Act 1958 s 32(1).

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486. Annual compensation.

Where a compulsory rights order¹ has become operative, and in the case of any land² which, in relation to that order, is land³ to which the Opencast Coal Act 1958⁴ applies it is shown that for any year⁵ (being either the year beginning with the operative date⁶ of the order, or a year beginning with an anniversary of that date and falling wholly or partly within the period of occupation⁷) the annual value⁸ of the relevant land is less than the annual value of that land would have been if the land comprised in the order had not included any of the owner's land comprised in the order⁹, and all the owner's land comprised in the order had remained in the state¹⁰ in which it was immediately before the operative date, the person who is for the time being the owner of the relevant land is entitled to compensation for that year of an amount equal to the difference¹¹.

No annual compensation is payable for any year for which the interest of the owner of the other land is held subject to, and with the benefit of, a tenancy which was subsisting immediately before the operative date of the order, unless the rent payable for that year is subject to a liability to be reduced in consequence of the order or of anything done in the exercise of rights conferred by the order¹², or is a rent which has been so reduced in pursuance of such a liability¹³. Nor is any such compensation payable for any year for which the owner of the other land is entitled to annual compensation in respect of a right restrictive of the use of land¹⁴, being a right which fulfils certain conditions¹⁵.

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

2 As to the meaning of 'land' see PARA 405 note 4 ante.

3 Ie in the Opencast Coal Act 1958 s 32(2), (3) (as amended) referred to as 'the relevant land': see s 32(2) (as amended: see note 11 infra).

4 Ie ibid s 32 (as amended): see s 32(2) (as amended: see note 11 infra).

5 For the meaning of 'year' see PARA 449 note 7 ante. For the position where a person is the owner of the other land for part only of a year see PARAS 495-499 post.

6 For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

7 For the meaning of 'the period of occupation' see PARA 424 ante.

8 The annual value of any land for any year is taken to be an amount equal to the annual rent at which, immediately before the beginning of that year, that land, in the appropriate circumstances, might reasonably have been expected to be let from year to year under a contract of tenancy whereby the tenant undertook to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses, if any, necessary to maintain the land in a state to command that rent, and not to carry out any operations on the land, or to make any change in the use of it, for which permission would be required under the Town and Country Planning Act 1990 Pt III (ss 55-106) (as amended) or the Town and Country Planning (Scotland) Act 1997 Pt III (ss 26-75), except any operations for which such permission has been granted and is in force immediately before the beginning of that year: Opencast Coal Act 1958 s 32(2B) (added by the Coal Industry Act 1994 s 52(2), Sch 8 para 25(2); and amended by the Planning (Consequential Provisions) (Scotland) Act 1997 s 4, Sch 2 para 5(4)). The appropriate circumstances in determining the annual value of the relevant land for any year is taken to be the actual circumstances existing immediately before the beginning of that year, and in determining what would have been the annual value of the relevant land in the circumstances specified in the Opencast Coal Act 1958 s 32(2B)(a), (b) (as added and amended) is taken to be the circumstances specified in s 32(2B)(a), (b) (as added and amended): s 32(3) (amended by the Coal Industry Act 1994 Sch 8 para 25(3)).

In either case the relevant land is assumed to have been available for letting with vacant possession immediately before the beginning of the year in question: Opencast Coal Act 1958 s 32(3) proviso.

Where any land to which s 32 (as amended) applies in relation to a compulsory rights order is (1) land which, immediately before the operative date of the order, was used for a purpose for which land would not normally be let from year to year; or (2) land in respect of which, immediately before the operative date, there was in force permission granted under the Town and Country Planning Act 1990 Pt III (as amended) (see TOWN AND COUNTRY PLANNING) for the land to be used for such a purpose, the Opencast Coal Act 1958 s 32(3) (as amended) does not apply, and for the purposes of s 32(2) (as amended) annual value is determined in accordance with regulations made by the Secretary of State under Sch 6 para 13: s 34, Sch 6 para 13(1); and see the Opencast Coal (Annual Value in Special Cases) Regulations 1959, SI 1959/981 (as amended). As to the Secretary of State see PARA 4 ante.

9 Any reference to the owner's land comprised in the order is a reference to so much of the land comprised in the order as, immediately before the operative date, was land in which the interest of the owner was held by the person who was then the owner of the relevant land (see note 3 supra): Opencast Coal Act 1958 s 32(7)(a) (i). For the meaning of 'owner' see PARA 412 note 4 ante.

10 See PARA 453 note 4 ante.

11 Opencast Coal Act 1958 s 32(2) (amended by the Coal Industry Act 1994 s 67(8), Sch 8 para 25(1), Sch 11 Pt II). Subject (where different persons have been entitled to the rights for different parts of the year) to any apportionment under the Opencast Coal Act 1958 s 35(3) (see PARA 464 ante), the liability to pay compensation under s 32(2) (as amended) falls on the persons who, for the whole or any part of the year in question, have been entitled to the rights conferred by the order: s 32(2A) (added by the Coal Industry Act 1994 Sch 8 para 25(2)). As to the persons entitled to the rights conferred by the order see PARA 424 note 4 ante.

Where under the Opencast Coal Act 1958 s 32(2) (as amended) a person is entitled to compensation as the owner of any land, and his interest in that land is subject to a mortgage (for the meaning of which see PARA 430 note 6 ante) and the mortgagee is, to the extent of that interest, in possession of the land or of the rents and profits, the compensation is paid to the mortgagee, and is paid or applied by him as mentioned in s 43(2) (see PARA 464 ante): s 43(3) (amended by the Coal Industry Act 1994 Sch 8 para 32, Sch 11 Pt II).

12 Ie if by the terms of the tenancy or any enactment the tenant is entitled to require that rent to be so reduced, or is entitled to require the question whether the rent should be so reduced, or generally what rent should be payable under the tenancy, to be referred to arbitration or to any court or tribunal: Opencast Coal Act 1958 Sch 6 para 17(2).

13 Ibid Sch 6 paras 17(1), 19. The reference to a rent which has been so reduced is to be construed in accordance with the provision in note 12 supra: Sch 6 para 17(2).

14 See ibid s 31(2) (as amended); and PARA 483 ante.

15 Ibid Sch 6 paras 18(1), 19. The right is restrictive of the use of the whole or part of the land comprised in the order: Sch 6 para 18(2)(a). The benefit of the right must be annexed to the other land, or to that land together with further land, or be exercisable by the owner of that land: Sch 6 para 18(2)(b). The exercise of the right, in relation to any land comprised in the order, could (apart from the order) have prevented that land from being used for the activities which, in relation to the opencast planning permission referred to in the order, constitute the permitted activities: Sch 6 para 18(2)(c) (amended by the Housing and Planning Act 1986 s 39(3), Sch 8 Pt I para 16).

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487. Terminal compensation.

For the purpose of assessing terminal compensation two values must be computed. These are: (1) the value¹, at the end of the period of occupation, of the owner's interest in the relevant land, assessed on the assumption that, in so far as any of the owner's land comprised in the compulsory rights order² has not then been restored to the condition³ in which it was immediately before the date of entry⁴, all restorative work⁵ will be carried out on that land in due course⁶; and (2) the value⁷ which, at the end of the period of occupation, the owner's interest in the relevant land would have if the entirety of the owner's land comprised in the order⁸ were in the state in which it was immediately before the date of entry⁹.

If the value under head (1) above is less than that under head (2) above, the person who at the end of the period of occupation is entitled to the owner's interest in the relevant land is entitled to compensation from the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order, and that compensation is of an amount equal to the difference¹⁰.

1 In computing this value it must be assumed that the owner's interest in the relevant land is in the circumstances being offered for sale subject to any incumbrances to which that interest is subject at the end of the period of occupation: Opencast Coal Act 1958 s 32(6). For the meaning of 'incumbrance' see PARA 470 note 4 ante. For the meaning of 'the period of occupation' see PARA 424 ante. 'The relevant land' means the land to which s 32 (as amended) (see PARA 485 ante) applies (s 32(2)), and 'the owner's interest in the relevant land' means the interest in that land which constitutes the interest of the owner of it (s 32(4)). As to the meaning of 'land' see PARA 405 note 4 ante. For the meaning of 'owner' see PARA 412 note 4 ante.

2 I.e. so much of the land comprised in the order as, immediately before the operative date, was land in which the owner's interest was held by the person then entitled to the owner's interest in the relevant land: *ibid* s 32(7)(a)(ii). For the meaning of 'the operative date' see PARA 423 text to note 1 ante. As to compulsory rights orders see s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

3 See PARA 453 note 4 ante.

4 For the meaning of 'the date of entry' see PARAS 424 note 1, 434 note 2 ante.

5 I.e. work qualifying for compensation under the Opencast Coal Act 1958 s 22 (see PARA 467 ante) which is work for the purpose of further restoring that land to or towards the condition in which it was immediately before the date of entry, or a condition substantially similar to it, being work in respect of which, so far as the nature of the work is concerned, expenses would be treated as reasonably incurred for the purposes of s 22(1): s 32(7)(b). As to the meaning of 'restore' see PARA 415 note 9 ante.

6 *Ibid* s 32(5)(a). 'In due course' means at the first reasonable opportunity after the end of the period of occupation, or within a reasonable time after that opportunity arises: s 32(7)(c).

7 See note 1 *supra*.

8 See note 2 *supra*.

9 Opencast Coal Act 1958 s 32(5)(b).

10 *Ibid* s 32(4) (amended by the Coal Industry Act 1994 s 52(2), Sch 8 para 25(4)).

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(vii) Special Cases

A. CONCURRENT AND LIMITED COMPULSORY RIGHTS ORDERS

488. Concurrent compulsory rights orders.

The Secretary of State¹ may by regulations² make provision for modifying or adapting any of the provisions of the Opencast Coal Act 1958 relating to compensation in respect of compulsory rights orders³ in their application to land⁴ which (1) constitutes or forms part of the land comprised in such an order, or, in relation to such an order, forms part of a holding qualifying for compensation⁵, or is other land in the same ownership qualifying⁶ for compensation⁷; and (2) at any time after the operative date⁸ of that order, and before the end of the period of occupation⁹, constitutes or forms part of the land comprised in another such order, or, in relation to another such order, forms part of a holding qualifying for compensation¹⁰, or is other land in the same ownership qualifying¹¹ for compensation¹².

1 As to the Secretary of State see PARA 4 ante.

2 See the Opencast Coal (Concurrent Orders and Requisitions) Regulations 1959, SI 1959/980, regs 1-3, 5. As to regulation-making powers generally see PARA 409 ante.

3 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

4 As to the meaning of 'land' see PARA 405 note 4 ante.

5 Ie a holding to which the Opencast Coal Act 1958 s 17 (as amended) or s 29 (as amended) (see PARAS 463, 479 ante) applies: see s 34, Sch 6 para 29(a).

6 Ie under ibid s 32 (as amended) (see PARA 485 et seq ante): see Sch 6 para 29(a).

7 Ibid Sch 6 para 29(a).

8 For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

9 For the meaning of 'the period of occupation' see PARA 424 ante.

10 Ie a holding to which the Opencast Coal Act 1958 s 17 (as amended) or s 29 (as amended) (see PARAS 463, 479 ante) applies: see Sch 6 para 29(b).

11 Ie under ibid s 32 (as amended) (see PARA 485 et seq ante): see Sch 6 para 29(b).

12 Ibid Sch 6 para 29(b).

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489. Limited compulsory rights orders.

Subject to two exceptions, the compensation provisions of the Opencast Coal Act 1958 do not have effect in relation to limited compulsory rights orders¹. These exceptions are: (1) that in so far as the operation of such an order extends to an easement or similar right² in respect of the whole or part of the land³ comprised in the order, or to a right restrictive of the use of the whole or part of that land, the provisions of the Act with regard to compensation for easements or similar rights⁴ have effect with respect to that easement or right, but not with respect to any easement or right to which the operation of the order does not extend⁵; and (2) that in so far as the operation of such an order extends to the interests or rights created or conferred by a mining lease⁶ or order conferring working rights⁷ in respect of minerals⁸ in or under the land comprised in the order or part of it, the provisions of the Act relating to compensation for minerals⁹ have effect with respect to that interest or those rights, but not with respect to any interest or rights created or conferred by a mining lease or order to which the compulsory rights order does not extend¹⁰.

1 Opencast Coal Act 1958 s 34, Sch 6 para 30(1), (4). A limited compulsory rights order is one falling within s 8(1) (as amended): see PARA 430 ante. As to compulsory rights orders see s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

2 See PARA 482 ante. For the meaning of 'similar right' see PARA 430 note 3 ante. As to easements generally see EASEMENTS AND PROFITS A PRENDRE.

3 See PARA 482 ante. As to the meaning of 'land' see PARA 405 note 4 ante.

4 Ie the provisions of the Opencast Coal Act 1958 s 31 (as amended) (see PARAS 482-484 ante): see Sch 6 para 30(2). For the purposes of s 31 (as amended), s 23(4) (see PARA 470 note 4 ante) continues to apply: Sch 6 para 30(4).

5 Ibid Sch 6 para 30(2).

6 For the meaning of 'mining lease' see PARA 430 note 6 ante.

7 For the meaning of 'order conferring working rights' see PARA 430 note 7 ante.

8 As to the meaning of 'minerals' see PARA 12 note 22 ante.

9 Ie the provisions of the Opencast Coal Act 1958 s 33, Sch 5 (as amended) (see PARA 455 et seq ante): see Sch 6 para 30(3).

10 Ibid Sch 6 para 30(3).

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B. WOODLANDS

490. Modification or adaptation of compensation provisions.

The Secretary of State¹ may by regulations² make provision for modifying or adapting any of the provisions of the Opencast Coal Act 1958 relating to compensation³ in their application to land⁴ which immediately before the operative date⁵ of a compulsory rights order⁶, or the date of entry⁷ under such an order, was used as woodlands, or as woodlands of a particular description specified in the regulations⁸.

1 As to the Secretary of State see PARA 4 ante.

2 At the date at which this volume states the law no such regulations had been made. As to regulation-making powers generally see PARA 409 ante.

3 See note 8 infra.

4 As to the meaning of 'land' see PARA 405 note 4 ante.

5 For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

6 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

7 For the meaning of 'the date of entry' see PARAS 424 note 1, 434 note 2 ante.

8 Opencast Coal Act 1958 s 34, Sch 6 para 15. The compensation provisions affected by Sch 6 para 15 are only those enacted in respect of compulsory rights orders.

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C. ALLOTMENTS

491. Terminal compensation.

On the statutory termination¹ of an allotment tenancy², the tenant under that tenancy is not entitled to any compensation from his landlord by virtue of the Small Holdings and Allotments Act 1908 or the Allotments Act 1922 or the Allotments Act 1950, or by virtue of any other enactment relating to allotments³, but the provisions of the Opencast Coal Act 1958⁴ have effect as to compensation payable by the person on whose application the compulsory rights order was made to the tenant in respect of the termination of that tenancy⁵.

Such compensation is of an amount equal to one year's rent under the tenancy⁶ together with the amount of the compensation, if any, to which, under specified enactments⁷, the tenant would have been entitled from his landlord, on quitting the land on the termination of his tenancy, if the tenancy had been terminated by the landlord as from the date of entry⁸, and, in the case of an allotment garden⁹, the tenancy had been so terminated by re-entry¹⁰. Compensation accrues due on the date of entry¹¹.

1 The right to compensation under the Opencast Coal Act 1958 s 41(1), Sch 8 para 3 (as amended) does not arise unless the allotment tenancy is determined by Sch 8 para 2 (as amended) (see PARA 451 ante), when the rights under a compulsory rights order become exercisable. For the meaning of 'termination' see PARA 446 note 10 ante. As to compulsory rights orders see s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

2 Ie by virtue of ibid Sch 8 para 2: see Sch 8 para 3(1) (as amended: see note 5 infra). For the meaning of 'allotment tenancy' see PARA 451 note 3 ante.

3 For such legislation see generally AGRICULTURAL LAND vol 1 (2008) PARA 510 et seq. As to compensation see AGRICULTURAL LAND vol 1 (2008) PARA 566 et seq.

4 Ie the provisions of the Opencast Coal Act 1958 Sch 8 para 3 (as amended): see Sch 8 para 3(1) (as amended: see note 5 infra).

5 Ibid Sch 8 para 3(1) (amended by the Coal Industry Act 1994 s 52(2), Sch 8 para 43). As to the effect of a compulsory rights order upon an allotment tenancy see PARA 451 ante.

6 Ibid Sch 8 para 3(4). For this purpose the rate of the rent is taken to be that at which it was payable immediately before the date on which the compulsory rights order was made, or, if the tenancy was not then subsisting, such rate as would have represented a reasonable rent in relation to that tenancy if the order had not been made: Sch 8 para 3(4). For the meaning of 'year' see PARA 449 note 7 ante.

7 The specified enactments are: the Allotments Act 1922 ss 2, 3 (both as amended); s 5 (see AGRICULTURAL LAND vol 1 (2008) PARA 567 et seq); and the Small Holdings and Allotments Act 1908 s 47 (as amended) (see AGRICULTURAL LAND). In determining the amount of such compensation, no account is to be taken of any sum due to the landlord from the tenant, or of any right which the landlord would have had, under the Allotments Act 1950 or otherwise, to deduct any sum so due: Opencast Coal Act 1958 Sch 8 para 4 (amended by the Coal Industry Act 1994 s 67(8), Sch 8 para 43, Sch 11 Pt II). Where the land which, immediately before the operative date of the compulsory rights order, was occupied under a tenancy which constitutes a holding to which the Opencast Coal Act 1958 s 29 (as amended) applies (see PARA 479 ante), ss 22, 23 (see PARAS 467-470 ante) apply in relation to that holding subject to modifications: Sch 8 para 9(1). These are that s 22 applies as if any reference in it to the condition in which the land was immediately before the date of entry were a reference to the condition in which the land would have been then, if the matters qualifying for compensation had not existed (Sch 8 para 9(2)), these latter matters being those in respect of which compensation is payable as stated in the text to this note (see Sch 8 para 9(4)); and that s 23(2)(c) applies as if for the value there mentioned there were substituted the value which, at the end of the period of occupation, a freehold interest in

the holding would have if it were then in the state in which it might reasonably have been expected to be, immediately before the date of entry, if the matters qualifying for compensation had not existed (Sch 8 para 9(3)).

8 Ibid Sch 8 para 3(2)(a), (3).

9 For the meaning of 'allotment garden' see PARA 451 note 3 ante.

10 Opencast Coal Act 1958 Sch 8 para 3(2)(b), (3). The re-entry referred to is that mentioned in the Allotments Act 1922 s 2(2) (as substituted): see AGRICULTURAL LAND vol 1 (2008) PARA 567.

11 Opencast Coal Act 1958 Sch 8 para 6(1). Section 35(7), (8) (s 35(7) as amended) (see PARAS 501-502 post) applies in relation to any compensation payable under Sch 8 (as amended) as it applies in relation to any such compensation as is referred to in s 35(7) (as amended): Sch 8 para 6(3) (amended by the Coal Industry Act 1994 Sch 8 para 43, Sch 11 Pt II).

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492. Compensation for forced sale.

Where, in consequence of the confirmation of a compulsory rights order¹, the tenant under an allotment tenancy² incurs a loss in respect of a forced sale of any trees, bushes, structures, improvements or other property which, in pursuance of statutory powers³, he has removed from the land comprised in the tenancy, he is entitled, subject to certain provisions⁴, to compensation of an amount equal to that loss⁵. Such compensation accrues due on the effective date⁶ of the sale, or, if that date was before the operative date⁷ of the order, is to be treated as having accrued due on the effective date of the sale⁸.

1 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. As to their confirmation see PARA 433 ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

2 For the meaning of 'allotment tenancy' see PARA 451 note 3 ante.

3 I.e. in pursuance of the Allotments Act 1922 s 4 or s 5, or of the Small Holdings and Allotments Act 1908 s 47(4) (as amended) (see AGRICULTURAL LAND vol 1 (2008) PARAS 573, 601); Opencast Coal Act 1958 s 41(1), Sch 8 para 5(1) (as amended: see note 5 infra).

4 I.e. subject to ibid Sch 8 para 5(1A)-(3) (as added and amended): see Sch 8 para 5(1) (as amended: see note 5 infra). Section 27(3) (as amended) (see PARA 478 ante) applies for the purposes of Sch 8 para 5 (as amended) as it applies for the purposes of s 27 (as amended): Sch 8 para 5(2).

5 Ibid Sch 8 para 5(1) (amended by the Coal Industry Act 1994 ss 52(2), 67(8), Sch 8 para 43(3), Sch 11 Pt II). Compensation under the Opencast Coal Act 1958 Sch 8 para 5 (as amended) is payable by the person by whom it would be payable if it were compensation under s 27 (as amended): Sch 8 para 5(1A) (added by the Coal Industry Act 1994 Sch 8 para 43(3), Sch 11 Pt II). The provisions of the Opencast Coal Act 1958 Sch 8 para 5(1) (as amended); Sch 8 para 5(2) have effect without prejudice to any right to compensation under s 27 (as amended) (as applied by s 29 (as amended)), but compensation is not payable under Sch 8 para 5 (as amended), in respect of a forced sale if compensation in respect of it is payable under s 27 (as amended) (as so applied): Sch 8 para 5(3).

6 'Effective date', in relation to a sale, means the date on which the property sold becomes the property of the purchaser: ibid s 35(9) (applied by Sch 8 para 6(3) (as amended)).

7 For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

8 Opencast Coal Act 1958 Sch 8 para 6(2).

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493. Determination of disputes.

Any dispute as to a right to compensation under the provisions of the Opencast Coal Act 1958 relating to allotment tenancies¹, or as to the amount of any such compensation, or as to a right to compensation², in respect of a holding consisting exclusively of land³ occupied under an allotment tenancy, or as to the amount of any such compensation, is determined⁴ by a valuation⁵ made by a person appointed in default of agreement by the judge in the county court having jurisdiction in the place where the land in question is situated, on an application in writing made for the purpose by the person claiming the compensation or by the person from whom it is claimed⁶.

1 Ie the provisions of the Opencast Coal Act 1958 s 41, Sch 8 (as amended): see Sch 8 para 7 (as amended: see note 6 infra). For the meaning of 'allotment tenancy' see PARA 451 note 3 ante.

2 Ie compensation under ibid s 17 (as amended) (as applied by s 29 (as amended)): see Sch 8 para 7 (as amended: see note 6 infra). Section 29 (as amended) is concerned with compensation where the holding was not occupied wholly or mainly for the purposes of agriculture carried on by way of a trade or business: see PARA 479 ante.

3 As to the meaning of 'land' see PARA 405 note 4 ante.

4 Ie notwithstanding anything in the Opencast Coal Act 1958 s 40(3) (as amended): see Sch 8 para 7 (as amended: see note 6 infra).

5 The Allotments Act 1922 s 6(2) (which relates to the charges of the valuer for a valuation under s 6 (as amended)) applies in relation to a valuation under the Opencast Coal Act 1958 Sch 8 para 7 (as amended) as it applies in relation to a valuation under the Allotments Act 1922 s 6 (as amended) (see AGRICULTURAL LAND vol 1 (2008) PARA 574), with the substitution, for the reference to the landlord, of a reference to the person from whom the compensation under the Opencast Coal Act 1958 Sch 8 (as amended) is claimed: see Sch 8 para 8 (amended by the Coal Industry Act 1994 s 52(2), Sch 8 para 43(1), (6)).

6 Opencast Coal Act 1958 Sch 8 para 7 (amended by the Coal Industry Act 1994 s 67(8), Sch 8 para 43(5), Sch 11 Pt II); and see the Courts Act 1971 s 56(1), Sch 8 Pt I para 2; and COURTS. As to claims for compensation see also PARA 500 post.

UPDATE

493 Determination of disputes

NOTE 4--Opencast Coal Act 1958 s 40(3) amended: see PARA 500.

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D. COMPENSATION FOR RESTRICTED LETTINGS, EASEMENTS AND SIMILAR RIGHTS

494. Rights to be disregarded.

For the purposes of certain of the compensation provisions of the Opencast Coal Act 1958¹ (1) any right conferred by a letting of land², or a licence to occupy land, in pursuance of an agreement made, whether the agreement expressly so provides or not, in contemplation of the use of the land only for grazing or mowing during some specified period of the year³; and (2) any easement or similar right⁴ over land⁵, is to be disregarded, and in relation to any land which is subject to any such right, those provisions apply as if that right had not been conferred, reserved or otherwise acquired⁶.

1 le the Opencast Coal Act 1958 s 17(2), (3) (as amended) (see PARAS 463-464 ante); s 21(2) (see PARA 466 ante); s 29(1) (as amended) (see PARA 479 ante); and s 17(3) (as amended) (as applied by s 29(2) (as amended) (see PARA 480 ante)): see s 34, Sch 6 para 21.

2 As to the meaning of 'land' see PARA 405 note 4 ante.

3 See the Opencast Coal Act 1958 Sch 6 para 20(a) (amended by the Agricultural Holdings Act 1986 s 100, Sch 14 para 32). For the meaning of 'year' see PARA 449 note 7 ante.

4 See PARA 482 ante. For the meaning of 'similar right' see PARA 430 note 3 ante. As to easements generally see EASEMENTS AND PROFITS A PRENDRE.

5 Opencast Coal Act 1958 Sch 6 para 20(b).

6 Ibid Sch 6 para 21.

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E. APPORTIONMENT OF COMPENSATION

495. Changes in right of occupation.

Where an act or event occurs by which one person becomes the person who is for the time being entitled to occupy part of a holding¹ or who would be so entitled if a compulsory rights order² had not been made, and another person becomes the person who is for the time being entitled to occupy another part of that holding, or who would be so entitled if the order had not been made, and that act or event occurs during the course of the year³ beginning with the operative date⁴ of the order in question, or in the course of a year beginning with an anniversary of that date, the compensation provisions of the Opencast Coal Act 1958⁵ apply subject to qualification⁶. The qualification is that those provisions apply (1) in relation to the entirety of the holding, with respect to the part of that year ending with that act or event; and (2) in relation to each of the separate holdings⁷, with respect to the part of that year after that act or event, as if any reference in those provisions to a year included a reference both to the part of that year ending with that act or event and to the part of that year after that act or event⁸.

¹ I.e. a holding to which the Opencast Coal Act 1958 s 17 (as amended) (see PARA 463 ante) applies: see s 34, Sch 6 para 26(1).

² As to compulsory rights orders see *ibid* s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

³ For the meaning of 'year' see PARA 449 note 7 ante.

⁴ For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

⁵ I.e. the provisions of the Opencast Coal Act 1958 Pt II (ss 17-36) (as amended), Sch 6 (as amended), other than Sch 6 para 26(1): see Sch 6 para 26(1).

⁶ *Ibid* Sch 6 para 26(1).

⁷ See *ibid* Sch 6 para 1(2) (as amended); Sch 6 para 5; and PARA 463 note 3 ante.

⁸ *Ibid* Sch 6 para 26(1). The provisions of Sch 6 para 26 (as amended) do not apply in relation to any compensation the entitlement to which is apportioned in accordance with s 17(3A) (as added) (see PARA 464 note 13 ante): Sch 6 para 26(5) (added by the Coal Industry Act 1994 s 52(2), Sch 8 paras 1, 42(4), (6)). The Opencast Coal Act 1958 Sch 6 para 26(5) (as added) does not apply in relation to any compulsory rights order confirmed before the restructuring date (i.e. 31 October 1994: see PARA 3 note 9 ante): Coal Industry Act 1994 Sch 8 para 42(4), (6).

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496. Changes in right of compensation.

Where, in consequence of any act or event¹ occurring on or after the operative date² of a compulsory rights order³ and before the end of the period of occupation⁴, one person would be entitled to compensation for any year⁵ in respect of a holding⁶ if that act or event had occurred before the beginning of that year, and another person would be entitled to compensation for that year in respect of the holding if that act or event had occurred after the end of that year, the compensation provisions of the Opencast Coal Act 1958⁷ apply as if any reference to a year included a reference both to the part of that year ending with that act or event and to the part of that year after that act or event⁸.

1 Ie other than such an act or event as is mentioned in the Opencast Coal Act 1958 s 34, Sch 6 para 26(1) (see PARA 495 ante): Sch 6 para 26(2).

2 For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

3 As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

4 For the meaning of 'the period of occupation' see PARA 424 ante.

5 For the meaning of 'year' see PARA 449 note 7 ante.

6 For the meaning of 'holding' see PARAS 463, 479 ante.

7 Ie the provisions of the Opencast Coal Act 1958 Pt II (ss 17-36) (as amended), Sch 6 (as amended), other than Sch 6 para 26(2): Sch 6 para 26(2), which has effect, with necessary modifications, in relation to compensation under Sch 5 para 4, 5 or 12 (see PARAS 456-457, 460 ante): Sch 6 para 27.

8 Ibid Sch 6 para 26(2). As to the application of Sch 6 para 26 (as amended) see PARA 495 note 8 ante.

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497. Compulsory rights order having effect for part of a year.

For the purposes of the application of the compensation provisions of the Opencast Coal Act 1958¹ to a compulsory rights order² which has effect only for part of a year³, or for one or more complete years followed by part of another year, any reference in those provisions to a year is to be construed as including a reference to that part of a year⁴.

1 The provisions referred to are those of the Opencast Coal Act 1958 Pt II (ss 17-36) (as amended), Sch 6 (as amended), other than Sch 6 para 26(3), which has effect, with necessary modifications, in relation to compensation under Sch 5 paras 4, 5 or 12 (see PARAS 456, 457, 460 ante): s 34, Sch 6 para 27.

2 As to compulsory rights orders see *ibid* s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

3 For the meaning of 'year' see PARA 449 note 7 ante.

4 Opencast Coal Act 1958 Sch 6 para 26(3). As to the application of Sch 6 para 26 (as amended) see PARA 495 note 8 ante.

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498. Apportionment of annual value.

Where any of the compensation provisions of the Opencast Coal Act 1958¹ are applied to a part of a year², any reference to annual value, or to any other amount which is required to be assessed by reference to a year, is to be construed as a reference to so much of the annual value for that year, or of the amount in question assessed by reference to that year, as, on a rateable apportionment of that value or amount as between different parts of that year, is properly attributable to that part of that year³.

1 The provisions referred to are those of the Opencast Coal Act 1958 Pt II (ss 17-36) (as amended), Sch 6 (as amended): s 34, Sch 6 para 26(4), which has effect, with necessary modifications, in relation to compensation under Sch 5 para 4, 5 or 12 (see PARAS 456-457, 460 ante): Sch 6 para 27.

2 Ie in accordance with *ibid* Sch 6 para 26(1)-(3): see PARAS 495-497 ante. For the meaning of 'year' see PARA 449 note 7 ante.

3 *Ibid* Sch 6 para 26(4). As to the application of Sch 6 para 26 (as amended) see PARA 495 note 8 ante.

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499. Compensation for depreciation of other land.

Where compensation is payable in respect of depreciation in the value of other land¹ held in the same ownership², and a person is the owner³ of that other land for part, but not the whole, of a year⁴, the relevant provision⁵ applies as if any reference to a year included a reference to that part of a year⁶.

1 For the meaning of 'year' see PARA 449 note 7 ante.

2 Ie under the Opencast Coal Act 1958 s 32 (as amended) (see PARAS 485-487 ante): see s 34, Sch 6 para 28(1).

3 For the meaning of 'owner' see PARA 412 note 4 ante.

4 For the meaning of 'year' see PARA 449 note 7 ante.

5 Ie the Opencast Coal Act 1958 s 32(2) (as amended) (see PARA 486 ante): see Sch 6 para 28(1).

6 Ibid Sch 6 para 28(1), which has effect without prejudice to the operation of Sch 6 para 26(3): Sch 6 para 28(2). Schedule 6 para 26(4) has effect in relation to Sch 6 para 28(1) as it has effect in relation to Sch 6 para 26(1)-(3) (see PARAS 495-497 ante): Sch 6 para 28(2).

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(5) CLAIMS AND PAYMENTS

500. Claims.

Compensation under the Opencast Coal Act 1958 is not payable by any person unless a claim for it is duly made to that person¹. The procedure for making claims² for compensation under the Opencast Coal Act 1958, other than claims for compensation under certain enactments applied by that Act³, is prescribed⁴ by regulations⁵. Generally, the Lands Tribunal⁶ must determine any dispute (1) as to a right to compensation from any person, or as to the amount of any such compensation⁷; or (2) as to a right to the payment of any fees by virtue of regulations⁸, or as to the amount of the fees payable in any case by virtue of any such regulations⁹; or (3) as to the amount of the quarterly payments payable¹⁰ in respect of certain types of compensation¹¹.

1 Opencast Coal Act 1958 s 40(1) (amended by the Coal Industry Act 1994 s 52(2), Sch 8 para 30).

2 A claim is a condition precedent to the payment of compensation: see PARA 452 ante.

3 The compensation payable in accordance with any enactment applied by the Opencast Coal Act 1958 s 13 (repealed) or s 16 (as amended) (see PARA 421 ante) or any sum payable in accordance with any enactment applied by s 45 (as amended) (see PARA 416 ante): s 40(4). As to the determination of disputes see also PARA 493 ante.

4 For the meaning of 'prescribed' see PARA 421 note 13 ante.

5 See the Opencast Coal Act 1958 s 40(2) (as amended), which prescribes the matters for which such regulations may provide. Regulations made under s 40 (as amended) by the Secretary of State may: (1) require claims for compensation under the Opencast Coal Act 1958 to be made in such form, and within such time, as may be prescribed by the regulations (s 40(2)(a)); (2) require a claimant to provide such evidence in support of the claim, and such information as to the interest of the claimant in land to which the claim relates, and as to the interests of other persons which are known to the claimant, as may be so prescribed (s 40(2)(b)); (3) include provisions as to professional and other fees incurred by claimants in preparing and supporting claims for compensation under the Act, requiring any person, within such limits (whether as to descriptions of fees, or as to amount, or otherwise) and subject to such conditions as may be prescribed, to pay fees so incurred (s 40(2)(c) (amended by the Coal Industry Act 1994 Sch 8 para 30)). No such regulations, in so far as they are made under the Opencast Coal Act 1958 s 40(2)(c) (as amended), apply to the costs of any proceedings before a court or tribunal, or affect any power of a court or tribunal with respect to any such costs: s 40(2) proviso. As to the Secretary of State see PARA 4 ante. As to the meaning of 'land' see PARA 405 note 4 ante.

As to regulation-making powers generally see PARA 409 ante. See the Opencast Coal (Claims) Regulations 1959, SI 1959/1146; and the Opencast Coal (Fees) Regulations 1960, SI 1960/194 (as amended). Claims must be made in accordance with the appropriate forms set out in the Opencast Coal (Claims) Regulations 1959, SI 1959/1146, Sch 1 (reg 3(1), (2)), modified as necessary in certain circumstances (reg 3(1) proviso), within the appropriate time-limits laid down in Sch 2 (reg 4), which there is discretion to enlarge in proper cases (reg 4 proviso). If any person so requires, a claimant for compensation is to provide proper proofs of title and other necessary evidence: see reg 5, Sch 3.

6 As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

7 Opencast Coal Act 1958 s 40(3)(a) (amended by Coal Industry Act 1994 Sch 8 para 30). For an exception see PARA 481 note 11 ante.

8 The regulations made under the Opencast Coal Act 1958 s 40 (as amended) or under s 36 (as amended) (see PARA 453 note 10 ante): see s 40(3)(b).

9 Ibid s 40(3)(b).

10 le in accordance with *ibid* s 35(2) (as amended) (see PARA 501 post): see s 40(3)(c).

11 *Ibid* s 40(3)(c). The types of compensation referred to in the text are those mentioned in s 35(2) (as amended) (see PARA 501 note 1 post): see s 40(3)(c).

UPDATE

500 Claims

TEXT AND NOTES 6-11--Reference to the Lands Tribunal is now to the Upper Tribunal:
Opencast Coal Act 1958 s 40(3) (amended by SI 2009/1307).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/7. OPENCAST WORKING OF COAL/(5) CLAIMS AND PAYMENTS/501. Payment of annual compensation.

501. Payment of annual compensation.

Annual compensation¹ payable under the Opencast Coal Act 1958 accrues due from day to day and is apportionable in respect of time accordingly². In respect of such compensation every person potentially liable for the compensation³ must, on account of any compensation that may become payable by him at the end of the year, make such quarterly payments⁴ as may be reasonable in the circumstances⁵ but, subject to this, the requirement to make payments will not arise until after the end of the year for which the compensation is payable⁶. Where interest is payable⁷ the rate is such as the Treasury may by order prescribe⁸.

1 The compensation payable under the Opencast Coal Act 1958 s 17 (as amended) (see PARA 463 et seq ante) (or s 17 (as amended) as applied by s 29 (as amended) (see PARA 479 ante)); s 31(2) (as amended) (see PARA 483 ante); s 32(2) (as amended) (see PARA 486 ante); or Sch 5 para 4, 5 or 12 (see PARAS 456-457, 460 ante); see s 35(2) (as amended: see note 5 infra).

2 Ibid s 35(3).

3 References to a 'person potentially liable to compensation', in relation to any time during a year at the end of which compensation may become payable under the Opencast Coal Act 1958, are references to the person on whom the liability to pay the compensation will fall at the end of the year if the person entitled to the rights conferred by the compulsory rights order in question does not change before the end of the year: s 35(9) (definition added by the Coal Industry Act 1994 s 52(2), Sch 8 para 26(5)). For the meaning of 'year' see PARA 449 note 7 ante. As to compulsory rights orders see the Opencast Coal Act 1958 s 4 (as amended); and PARA 422 et seq ante. The power to make such orders has not been exercisable since 31 December 1999: see PARA 405 ante.

4 'Quarterly payments' means payments calculated by reference to the usual quarter days: ibid s 35(9).

5 Ibid s 35(1) (amended by the Coal Industry Act 1994 Sch 8 para 26(1)); Opencast Coal Act 1958 s 35(2)(a) (amended by the Coal Industry Act 1994 Sch 8 para 26(2)).

6 Opencast Coal Act 1958 s 35(1), (2)(b) (as amended: see note 5 supra). If the amount of the compensation payable for any year by any person to another exceeds the aggregate amount of the quarterly payments made on that account during that year, the balance is payable together with interest on the amount of the balance from the end of that year to the date of payment: s 35(1), (2)(c) (as so amended). If the aggregate amount of the compensation paid for any year by any person to another in respect of any such compensation (excluding any amount paid on account of interest) exceeds the principal amount of the compensation payable for that year by that person to that other person, the person who paid it (without prejudice to any right of recovery apart from s 35(2) (as amended)) is entitled to deduct the amount of the overpayment from any compensation payable by him to that person for any subsequent year: s 35(1), (2)(d) (as so amended).

7 See note 6 supra.

8 Opencast Coal Act 1958 s 35(8). At the date at which this volume states the law the rate is 4% per annum less than the base rate quoted from time to time by the Committee of London Clearing Bankers or, where there is for the time being more than one such rate, the rate which, when the base rate quoted by each bank is ranked in a descending sequence of seven, is fourth in the sequence: see the Opencast Coal (Rate of Interest on Compensation) Order 1992, SI 1992/46 (amended by SI 2001/3649). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/7. OPENCAST WORKING OF COAL/(5) CLAIMS AND PAYMENTS/502. Payment of terminal compensation.

502. Payment of terminal compensation.

Terminal compensation¹ payable under the Opencast Coal Act 1958 accrues due at the end of the period of occupation², and, if not paid within 30 days of that date, is payable together with interest³ from that date to the date of payment⁴.

1 The compensation payable under the Opencast Coal Act 1958 s 23 (see PARA 470 ante) (or s 23 as applied by s 29 (as amended) (see PARA 479 ante)); s 31(3) (as amended) (see PARA 484 ante); s 32(4) (as amended) (see PARA 487 ante); or Sch 5 para 8, 10 or 13 (see PARAS 458-459, 461 ante): s 35(4).

2 Ibid s 35(4). For the meaning of 'the period of occupation' see PARA 424 ante.

3 As to interest see PARA 501 note 8 ante.

4 Opencast Coal Act 1958 s 35(7) (amended by the Coal Industry Act 1994 ss 52(2), 67(8), Sch 8 para 26(4), Sch 11 Pt II).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/7. OPENCAST WORKING OF COAL/(5) CLAIMS AND PAYMENTS/503. Payment of additional compensation on reoccupation.

503. Payment of additional compensation on reoccupation.

Additional compensation payable under the Opencast Coal Act 1958 on the reoccupation of a holding qualifying for compensation as agricultural land¹ accrues due on the date when the person entitled to compensation² enters into occupation, if after the end of the period of occupation³, and at the end of the period of occupation in any other case⁴. If the compensation is not paid within the period of 30 days beginning with the date on which it accrues due, it is payable together with interest⁵ from that date until the date of payment⁶.

1 The compensation payable under the Opencast Coal Act 1958 s 23A (as added and amended) (see PARA 471 ante): see the Opencast Coal Act 1958 s 35(4A) (as added: see note 4 infra).

2 See PARA 471 ante.

3 For the meaning of 'the period of occupation' see PARA 424 ante.

4 Opencast Coal Act 1958 s 35(4A) (added by the Coal Industry Act 1975 s 6(2)).

5 As to interest see PARA 501 note 8 ante.

6 Opencast Coal Act 1958 s 35(7) (amended by the Coal Industry Act 1994 ss 52(2), 67(8), Sch 8 para 26(4), Sch 11 Pt II).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/7. OPENCAST WORKING OF COAL/(5) CLAIMS AND PAYMENTS/504. Payment of compensation for improvements and forced sales.

504. Payment of compensation for improvements and forced sales.

Compensation for short-term improvements¹ payable under the Opencast Coal Act 1958 accrues due at the beginning of the period of occupation²; and compensation payable in respect of forced sales³ accrues due on the effective date⁴ of the sale or, if that date was before the operative date⁵ of the order, is to be treated as having accrued due on the effective date of the sale⁶. In each case, if the compensation is not paid within the period of 30 days beginning with the date on which it accrues due, it is payable together with interest⁷ from that date until the date of payment⁸.

1 Ie compensation under the Opencast Coal Act 1958 s 26 (as amended) (see PARA 474 ante): see s 35(5).

2 Ibid s 35(5). For the meaning of 'the period of occupation' see PARA 424 ante.

3 Ie compensation under ibid s 27 (as amended) (or under s 27 (as amended) as applied by s 29 (as amended) (see PARA 478 ante)): see s 35(6).

4 For the meaning of 'the effective date' see PARA 492 note 6 ante.

5 For the meaning of 'the operative date' see PARA 423 text to note 1 ante.

6 Opencast Coal Act 1958 s 35(6).

7 As to interest see PARA 501 note 8 ante.

8 Opencast Coal Act 1958 s 35(7) (amended by the Coal Industry Act 1994 ss 52(2), 67(8), Sch 8 para 26(4), Sch 11 Pt II).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/7. OPENCAST WORKING OF COAL/(5) CLAIMS AND PAYMENTS/505. Payment of compensation in respect of disposable minerals.

505. Payment of compensation in respect of disposable minerals.

Any compensation payable in respect of disposable minerals¹ accrues due at the end of the year² in which the right in question is exercised³. If the compensation is not paid within the period of 30 days beginning with the date on which it accrues due, it is payable together with interest⁴ from that date until the date of payment⁵.

1 The compensation payable under the Opencast Coal Act 1958 s 31A (as added) (see PARA 462 ante): see s 35(6A) (as added: see note 3 infra). As to the meaning of 'minerals' see PARA 12 note 22 ante.

2 For the meaning of 'year' see PARA 449 note 7 ante.

3 Opencast Coal Act 1958 s 35(6A) (added by the Coal Industry Act 1994 s 52(2), Sch 8 para 26(3)).

4 As to interest see PARA 501 note 8 ante.

5 Opencast Coal Act 1958 s 35(7) (amended by the Coal Industry Act 1994 s 67(8), Sch 8 para 26(4), Sch 11 Pt II).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/7. OPENCAST WORKING OF COAL/(5) CLAIMS AND PAYMENTS/506. Payment where land is held for religious purposes.

506. Payment where land is held for religious purposes.

Where any compensation, other than compensation by way of payment for the cost of works¹, is payable by any person ('the person liable') under the Opencast Coal Act 1958, and that compensation would otherwise be payable to a person in right of an interest in land held by him for religious purposes², then (1) if the land is not in Wales and is ecclesiastical property³, the compensation is to be paid to the Church Commissioners⁴; and (2) in other cases, if the person liable is so requested by or on behalf of a body of persons notified to him by the Secretary of State⁵, after consultation with such persons or organisations as he may think appropriate, as the appropriate representative body, the person liable must pay the compensation to that body⁶.

1 le compensation under the Opencast Coal Act 1958 s 22 (see PARA 469 ante): s 42(1) proviso.

2 Ibid s 42(1) (amended by Coal Industry Act 1994 s 52(2), Sch 8 paras 1, 31). As to the meaning of 'land' see PARA 405 note 4 ante.

3 'Ecclesiastical property' means property belonging to an ecclesiastical benefice, or being or forming part of a church subject to the jurisdiction of a bishop of a diocese or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction: Opencast Coal Act 1958 s 42(7). Where the fee simple of any ecclesiastical property, other than property in Wales, is in abeyance, it must be treated for the purposes of the Opencast Coal Act 1958 as being vested in the Church Commissioners: s 42(6). As to the Church Commissioners see generally ECCLESIASTICAL LAW.

4 Ibid s 42(2).

5 As to the Secretary of State see PARA 4 ante.

6 Opencast Coal Act 1958 s 42(4) (amended by Coal Industry Act 1994 Sch 8 paras 1, 31). Where, apart from the Opencast Coal Act 1958 s 42 (as amended), compensation would be payable to a person as the owner of land, and (1) by virtue of s 42(2) or s 42(4) (as amended), the compensation is payable to the Church Commissioners or a representative body; and (2) by virtue of the operation in relation to that land of s 24 (as amended) or s 30, compensation is recoverable from him by another person, the Church Commissioners or representative body must indemnify him against any liability in respect of that compensation, and for that purpose may apply any money or securities held by them: s 42(5).

UPDATE

506 Payment where land is held for religious purposes

TEXT AND NOTES--1958 Act s 42 further amended: Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 6.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/7. OPENCAST WORKING OF COAL/(5) CLAIMS AND PAYMENTS/507. Payment where land is subject to mortgage or settlement.

507. Payment where land is subject to mortgage or settlement.

Where any compensation, other than annual compensation¹ or compensation by way of payment of the cost of works², payable under the Opencast Coal Act 1958 is payable in right of an interest in land³ which is subject to a mortgage⁴, any mortgagee of the interest may make a claim for the compensation⁵ and the compensation is payable to the mortgagee⁶ or, where there is more than one mortgagee, to the first mortgagee⁷. Where any such compensation is payable in right of an interest in land which is subject to a settlement, or is otherwise held in such a manner that the person entitled to that interest would not be competent to give an effective discharge for the proceeds of a sale of it, that compensation must be paid to the person who would be competent to give such a discharge⁸.

1 In this context 'annual compensation' means any such compensation as is mentioned in the Opencast Coal Act 1958 s 35(2) (as amended) (see PARA 501 note 1 ante): s 43(7). For the circumstances in which a mortgagee is entitled to annual compensation, and as to the application of compensation money paid to a mortgagee so entitled see PARA 464 note 12 ante. As to the payment of compensation for depreciation of other land to a mortgagee when the interest is subject to a mortgage and the mortgagee is in possession see PARA 486 note 11 ante. As to mortgage generally see MORTGAGE vol 77 (2010) PARA 101 et seq.

2 ie compensation under ibid s 22 (see PARA 467 ante): see s 43(4) (as amended: see note 5 infra).

3 As to the meaning of 'land' see PARA 405 note 4 ante.

4 As to the meaning of 'mortgage' see PARA 430 note 6 ante.

5 Opencast Coal Act 1958 s 43(4)(a) (amended by the Coal Industry Act 1994 ss 52(2), 67(8), Sch 8 para 32, Sch 11 Pt II). Such a claim does not, however, prejudice the making of a claim by the person entitled to the interest: Opencast Coal Act 1958 s 43(4)(a) (as so amended).

6 Where compensation is so payable and compensation is recoverable from the mortgagee by another person by virtue of ibid s 24 (as amended) or s 30 (see PARAS 472, 481 ante), the mortgagee must apply the compensation paid to him in the first place in or towards the payment of the compensation so recoverable, and any balance must be applied as if it were proceeds of sale: s 43(5).

7 Ibid s 43(4)(b) (as amended: see note 5 supra). Subject to s 43(5) (see note 6 supra), compensation so paid must be applied by the mortgagee as if it were proceeds of sale: s 43(4)(b) (as so amended).

8 Ibid s 43(6) (amended by the Coal Industry Act 1994 Sch 8 para 32, Sch 11 Pt II).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/(1) COMMON LAW OBLIGATIONS/508. Nuisance.

8. REGULATION OF MINES AND QUARRIES IN GENERAL

(1) COMMON LAW OBLIGATIONS

508. Nuisance.

The general principles of the law of nuisance¹ apply to the use of land as a mine² or quarry³, to the use of premises as part of a mine or quarry and to the operations, or the consequences of operations, carried on there. Examples of nuisance are the emission of dust⁴ or noxious fumes⁵, the discharge of effluents so as to pollute a river⁶, the creation of noise and vibration so as materially to interfere with comfort⁷, and the projection of debris by blasting⁸. The emission of smoke or fumes and the lack of proper fencing of abandoned and disused mines and quarries are in certain circumstances statutory nuisances⁹, and noise emitted from premises so as to be prejudicial to health or a nuisance constitutes a statutory nuisance under the Environmental Protection Act 1990¹⁰.

The escape of dangerous matter from land upon which it has been brought or collected in circumstances which amounts to an unnatural use of the land may impose on the occupier of the land liability¹¹ in nuisance for the damage done by the escape¹².

1 See generally NUISANCE.

2 For the meaning of 'mine' see PARA 5 ante.

3 For the meaning of 'quarry' see PARA 6 ante.

4 *Pwllbach Colliery Co Ltd v Woodman* [1915] AC 634, HL.

5 *St Helen's Smelting Co v Tipping* (1865) 11 HL Cas 642; *Cooke v Forbes* (1867) LR 5 Eq 166; *Salvin v North Brancepeth Coal Co* (1874) 9 Ch App 705.

6 See eg *Stockport Waterworks Co v Potter* (1861) 7 H & N 160; *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149, [1953] 1 All ER 179, CA; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 270 et seq.

7 *Crump v Lambert* (1867) LR 3 Eq 409; affd 17 LT 133.

8 *A-G (on the relation of Glamorgan County Council and Portardawe RDC) v PYA Quarries Ltd* [1957] 2 QB 169, [1957] 1 All ER 894, CA (projectiles, dust, vibration).

9 See PARAS 279-280 ante; and NUISANCE vol 78 (2010) PARA 155 et seq. As to the control of major accidents involving dangerous substances see the Control of Major Accident Hazards Regulations 1999, SI 1999/743 (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 662 et seq. As to emissions generally see also ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 1 et seq; ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 576 et seq.

10 See the Environmental Protection Act 1990 s 79 (as amended); and NUISANCE vol 78 (2010) PARA 115.

11 Under the principle in *Rylands v Fletcher* (1868) LR 3 HL 330: see NUISANCE vol 78 (2010) PARA 147 et seq.

12 *Western Engraving Co v Film Laboratories Ltd* [1936] 1 All ER 106, CA (escape of water brought to factory in large quantities); *Read v J Lyons & Co Ltd* [1947] AC 156, [1946] 2 All ER 471, HL.

UPDATE

508 Nuisance

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/(1) COMMON LAW OBLIGATIONS/509. Negligence.

509. Negligence.

At common law an employer of workers at a mine¹ or quarry² owes to each worker a duty to take reasonable care for his safety in all the circumstances of the case so as not to expose him to unnecessary risk³. Similarly, the occupier of a mine or quarry owes the common duty of care to those lawfully visiting the premises under the Occupiers' Liability Act 1957⁴.

1 For the meaning of 'mine' see PARA 5 ante.

2 For the meaning of 'quarry' see PARA 6 ante.

3 See HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 412 et seq.

4 See HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 412 et seq. As to the common duty of care see NEGLIGENCE vol 78 (2010) PARA 32. As to the duty owed to persons other than visitors see the Occupiers' Liability Act 1984; and NEGLIGENCE vol 78 (2010) PARA 40. As to occupiers' liability generally see NEGLIGENCE vol 78 (2010) PARA 29 et seq.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/(1) COMMON LAW OBLIGATIONS/510. Breach of statutory duty.

510. Breach of statutory duty.

Where a person whom the provisions of the mines and quarries legislation are designed to protect suffers injury by reason of a breach of any such provision creating a duty towards him, he may recover damages in a civil action for breach of statutory duty¹, subject to the common law and statutory defences which are available to the owner².

No provision of the Mines and Quarries Acts 1954 or the Mines and Quarries (Tips) Act 1969, or of the subordinate legislation made under them, is to be construed as derogating from the legal duties³ owed by an employer to his employees⁴. The owner of a mine or quarry may be liable both in negligence and for breach of statutory duty⁵.

1 See HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 416. As to the civil right of action for breach of statutory duty generally see TORT vol 97 (2010) PARA 495 et seq.

2 See HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 418; HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 878.

3 In any rule of law with respect to the duties owed by employers to their employees including, in particular, without prejudice to that generality, the duty to provide a safe system of working: Mines and Quarries Act 1954 s 193 (amended by the Quarries Regulations 1999, SI 1999/2024, s 47, Sch 2 Pt II); Mines and Quarries (Tips) Act 1969 s 1(3)(a). As to the duties of employers at mines see the Management of Health and Safety at Mines Regulations 1993, SI 1993/1897, regs 6, 7, Sch 1; para 533 post; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 749. As to the duties of employers at quarries and persons entitled to work quarries see the Quarries Regulations 1999, SI 1999/2024, regs 6, 41; para 535 post; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 839, 843.

4 Mines and Quarries Act 1954 s 193 (as amended: see note 3 supra); Mines and Quarries (Tips) Act 1969 s 1(3)(a).

The owner of a mine is not absolved from liability to pay damages in respect of a contravention, in relation to the mine, by a person employed by him of: (1) a provision of the Mines and Quarries Act 1954, of an order made under it or of regulations; or (2) a prohibition, restriction or requirement imposed by a notice served under or by virtue of the Act by an inspector, by reason only that the provision contravened was one which expressly imposed on that person or on persons of a class to which, at the time of the contravention, he belonged, a duty or requirement or expressly prohibited that person, or persons of such a class or all persons from doing a specified act or, as the case may be, that the prohibition, restriction or requirement was expressly imposed on that person or that that person was, in pursuance of the Act or regulations, appointed by a person other than the owner: s 159 (amended by the Quarries Regulations 1999, SI 1999/2024, Sch 2 Pt II). For the meaning of 'mine' see PARA 5 ante.

5 See *National Coal Board v England* [1954] AC 403, [1954] 1 All ER 546, HL; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 416.

UPDATE

510-513 Breach of statutory duty ... Working of mines and quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(i) In general/511. General application of the legislation.

(2) STATUTORY REGULATION

(i) In general

511. General application of the legislation.

Safety, health and welfare in mines¹ and quarries² are regulated by the Mines and Quarries Acts 1954 and 1969³, the Health and Safety at Work etc Act 1974 and subordinate legislation made under those Acts⁴, particularly the Quarries Regulations 1999⁵. Health and safety legislation is to be found elsewhere in this work⁶.

The Mines and Quarries Act 1954 also regulates the management and control of mines and quarries, although much of the legislation relating to mines and quarries is now contained in regulations and is to be found elsewhere in this work⁷. The Mines and Quarries (Tips) Act 1969 makes provision for the security of tips associated with mines⁸, and the Quarries Regulations 1999 make provision for ensuring safety at excavations and tips associated with quarries⁹. The Mines and Quarries (Tips) Act 1969 details the measures in relation to the prevention of public danger from disused tips in relation to both mines and quarries¹⁰.

The Mines and Quarries Acts 1954 and 1969 apply to all mines, including those belonging to the Crown or a government department or held in trust for the Crown for the purposes of a government department¹¹, and including training mines¹².

1 For the meaning of 'mine' see PARA 5 ante.

2 For the meaning of 'quarry' see PARA 6 ante.

3 The Mines and Quarries Acts 1954 and 1969 comprise the Mines and Quarries Act 1954 and the Mines and Quarries (Tips) Act 1969 Pt I (ss 1-10) (as amended): s 38(2). The Mines Management Act 1971 was repealed by the Management and Administration of Health and Safety at Mines Regulations 1993, SI 1993/1897, reg 41(3) as from 1 October 1993. As to management of health and safety in mines see now the Management and Administration of Health and Safety at Mines Regulations 1993, SI 1993/1897 (as amended) (see note 7 infra). As to health and safety requirements in quarries see now the Quarries Regulations 1999, SI 1999/2024 (as amended) (see note 7 infra).

4 See HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 343. As to the power to make and revoke rules under the Mines and Quarries Act 1954 see ss 173, 174 (amended by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(1), Sch 2 paras 15, 16). Regulations made under repealed provisions of the Mines and Quarries Acts 1954 and 1969 but continued in force by health and safety regulations may apply to all mines and quarries, to any class of mines or quarries or to a particular mine or quarry: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 343. Some of them grant exemptions from their provisions, or provide for the grant of exemption by the Health and Safety Executive or an authorised inspector: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 343. 'Inspector' means an inspector appointed by the Health and Safety Executive under the Health and Safety at Work etc Act 1974 s 19; and references to the inspector for the district are references, as respects a mine, to the inspector so appointed for carrying into effect the provisions of the Mines and Quarries Acts 1954 and 1969 in the district in which the mine is situated: Mines and Quarries Act 1954 s 182(1) (definition amended by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(1)(b), Sch 2 para 18(b), (c); and the Quarries Regulations 1999, SI 1999/2024, s 47(2), Sch 2 Pt II). As to the Health and Safety Executive and inspectors see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq. As to exemptions from the Quarries Regulations 1999, SI 1999/2024 (as amended) see reg 46; para 518 post; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 838.

5 Ie the Quarries Regulations 1999, SI 1999/2024 (as amended), made under the Health and Safety at Work etc Act 1974 s 15(1) (as amended), s 15(2), (3)(a), (5)(b), s 82(3)(a), Sch 3 paras 1(1), (2), 3(1), (2), 6, 8, 9, 12,

14, 15(1), 16, 18, 20, 21(b). The regulations impose requirements with respect to health and safety in quarries and supersede certain requirements formerly imposed by or under the Mines and Quarries Act 1954, the Mines and Quarries (Tips) Act 1969 and certain health and safety regulations. The Quarries Regulations 1999, SI 1999/2024 (as amended) make a number of amendments to the earlier legislation to restrict its application to mines (see PARAS 510 ante, 512 et seq post), although the Mines and Quarries (Tips) Act 1969 Pt II (ss 11-36) (as amended) continues to apply to both mines and quarries (see PARA 561 et seq post). The Quarries Regulations 1999, SI 1999/2024 (as amended) give effect in relation to quarries to EC Council Directive 92/104 (OJ L404, 31.12.92, p 10) concerning minimum requirements for improving the health and safety protection for workers in surface and underground material.

Save where the contrary intention appears, the Quarries Regulations 1999, SI 1999/2024 (as amended) generally apply to all quarries where persons work: reg 4(1). However, they do not apply to:

- 135 (1) any quarry at which there has been no extraction or preparation for sale of minerals within the previous 12 months (reg 4(2)(a));
- 136 (2) any quarry in relation to which notice of abandonment or ceasing of operations has been given in accordance with reg 45(1) (see PARAS 525, 526, 528 post; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 838) to the Health and Safety Executive, provided that the quarry is no longer being used for the extraction or preparation for sale of minerals (reg 4(2)(b)); or
- 137 (3) any part of a quarry which is being used exclusively by a person for a work activity unconnected with the extraction of minerals, or the preparation for sale of minerals, provided that any work activities with a view to abandoning that quarry or for the purpose of preventing the flow from that quarry into an adjacent quarry of water or material that flows when wet are not being carried on at that quarry (reg 4(2)(c), (3)).

The regulations apply to a self-employed person as they apply to an employer and as if that self-employed person were both an employer and a person at work: reg 4(4). For these purposes, 'minerals' includes stone, slate, clay, gravel, sand and any other natural deposits except peat: reg 2(1). 'Preparation for sale' includes the crushing, screening, washing, drying and bagging of minerals: reg 2(1).

As to exemptions from the Quarries Regulations 1999, SI 1999/2024 (as amended) see reg 46; para 518 post; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 838.

6 See HEALTH AND SAFETY AT WORK.

7 The Management and Administration of Health and Safety at Mines Regulations 1993, SI 1993/1897 (as amended) provide for the management and control of mines, and the Quarries Regulations 1999, SI 1999/2024 (as amended) impose requirements with respect to health and safety in quarries: see HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 748 et seq, 838 et seq.

8 See the Mines and Quarries (Tips) Act 1969 Pt I (as amended); and PARA 540 et seq post.

9 See the Quarries Regulations 1999, SI 1999/2024, Pt VI (regs 30-38) (as amended); and PARA 551 et seq post.

10 See the Mines and Quarries (Tips) Act 1969 Pt II (ss 11-36) (as amended); and PARA 561 et seq post.

11 Mines and Quarries Act 1954 s 179 (amended by the Quarries Regulations 1999, SI 1999/2024, Sch 2 Pt II); Mines and Quarries (Tips) Act 1969 s 1(3)(a). Any expenses incurred under or by virtue of the Mines and Quarries Act 1954 by the Secretary of State are to be defrayed out of moneys provided by Parliament and any sums received by him under or by virtue of the Act are to be paid into the Exchequer: s 178. As to the Secretary of State see PARA 4 ante.

12 See ibid s 183; and the Mines and Quarries (Tips) Act 1969 s 1(3)(a). A training mine is an excavation or series of excavations made for training purposes, ie for the purposes of instructing or training below ground persons in, or in any work connected with, mining minerals: see the Mines and Quarries Act 1954 s 183. As to the meaning of 'minerals' for these purposes see PARA 12 note 21 ante.

UPDATE

510-513 Breach of statutory duty ... Working of mines and quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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512. Meaning of 'owner' and 'operator'.

For the purposes of the Mines and Quarries Acts 1954 and 1969¹, the owner of a mine² is the person for the time being entitled to work it³, and a liquidator, receiver or manager who carries on the business of an owner is an additional owner⁴.

For the purposes of the Quarries Regulations 1999⁵, the operator in relation to a quarry⁶ means the person in overall control of the working of the quarry⁷.

1 As to these Acts see PARA 511 note 3 ante.

2 For the meaning of 'mine' see PARA 5 ante.

3 Mines and Quarries Act 1954 s 181(1) (amended by the Quarries Regulations 1999, SI 1999/2024, reg 47(2), Sch 2 Pt II); Mines and Quarries (Tips) Act 1969 s 1(3)(a).

4 Mines and Quarries Act 1954 s 181(4) (as amended: see note 4 supra); Mines and Quarries (Tips) Act 1969 s 1(3)(a). Any other person authorised to carry on the owner's business by an order of a court of competent jurisdiction is also an additional owner: Mines and Quarries Act 1954 s 181(4) (as so amended); Mines and Quarries (Tips) Act 1969 s 1(3)(a).

5 Ie the Quarries Regulations 1999, SI 1999/2024 (as amended).

6 For the meaning of 'quarry' see PARA 6 ante.

7 Quarries Regulations 1999, SI 1999/2024, reg 2(1). The regulations impose various duties on the operator: see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 839.

UPDATE

510-513 Breach of statutory duty ... Working of mines and quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(i) In general/513. Working of mines and quarries.

513. Working of mines and quarries.

A mine¹ is treated as being worked at any time when there are persons at work below ground or plant or equipment is in operation at the mine to maintain the safety of that mine or of any other mine or the operation of driving a shaft² or outlet is being undertaken at the mine³.

In general⁴, the Quarries Regulations 1999⁵ apply to all quarries⁶ where people work⁷.

1 For the meaning of 'mine' see PARA 5 ante.

2 For the meaning of 'shaft' see PARA 5 note 14 ante.

3 Mines and Quarries Act 1954 s 182(3)(a) (substituted by the Management and Administration of Health and Safety at Mines Regulations 1993, SI 1993/1897, reg 4(2), Sch 3 Pt II); Mines and Quarries (Tips) Act 1969 s 1(3)(a).

4 Ie except where a contrary intention appears, and subject to the Quarries Regulations 1999, SI 1999/2024, reg 4(2) (see PARA 511 note 5 ante; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 838).

5 Ie the Quarries Regulations 1999, SI 1999/2024 (as amended).

6 For the meaning of 'quarry' see PARA 6 ante.

7 See the Quarries Regulations 1999, SI 1999/2024, reg 4(1); and PARA 511 ante.

UPDATE

510-513 Breach of statutory duty ... Working of mines and quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/ (ii) Central Administration of the Mining Industry/A. THE SECRETARY OF STATE AND ADVISORY COMMITTEES/514. The Secretary of State's general powers and duties.

(ii) Central Administration of the Mining Industry

A. THE SECRETARY OF STATE AND ADVISORY COMMITTEES

514. The Secretary of State's general powers and duties.

The Secretary of State¹ undertakes the collection, preparation and publication of information and statistics relating to the mining and quarrying industries² and co-operates with such committees of the Privy Council as are formed for the purpose, and any other government departments concerned, in the initiation and direction of research in relation to matters connected with the powers and duties of the Secretary of State³. The Secretary of State and any other government department may make arrangements for the exercise and performance by such other government department or by the Secretary of State of any of the powers and duties of the Secretary of State or such other government department relating to mines, quarries and the mining and quarrying industries which appear to them to be such as could be more conveniently so exercised and performed⁴.

1 As to the Secretary of State see PARA 4 ante.

2 'Mines' and the 'the mining industry' include, respectively, quarries and the quarrying industry: Mining Industry Act 1920 s 25. For the meaning of 'mine' see PARA 5 ante; and for the meaning of 'quarry' see PARA 6 ante.

3 Ibid s 2(3).

4 Ibid s 23. In such case such other government department and its officers, or the Secretary of State and his officers, as the case may be, have all the powers and duties for such purpose as are exercisable by the Secretary of State and his officers or such other department and its officers: see s 23.

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515. Advisory committees.

After consultation with the various interests concerned, the Secretary of State¹ must appoint committees for giving him advice and assistance on matters connected with his functions under the Mining Industry Act 1920 relating to coal and the coal industry and to the metalliferous mining industry, and may appoint one or more other committees for giving him advice and assistance on matters connected with any of his other functions relating to mines and the mining industry or to quarries and the quarrying industry².

The Secretary of State must refer any question relating to his functions as to mines or quarries and the mining or quarrying industry to an advisory committee for advice where the question appears to him of such a nature as to make the reference desirable, and he must take into consideration any representations on it made to him by that committee³.

1 As to the Secretary of State see PARA 4 ante.

2 Mining Industry Act 1920 ss 4(1), 25. As to the abolition of the Domestic Coal Consumers' Council see PARA 90 ante.

3 Ibid ss 4(2), 25.

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B. SCHEMES, REGULATIONS, EXEMPTIONS, INQUIRIES ETC

516. Drainage schemes.

After holding such inquiry as he thinks fit, the Secretary of State¹ may make schemes² with respect to the drainage of any group of mines³ or quarries⁴ and as to the apportionment between the owners⁵ of the mines or quarries of any expenditure for a common purpose required by any such scheme; and any such scheme may amend or repeal any local Act of Parliament⁶ in connection with such drainage⁷. For this purpose the Secretary of State may adopt, with or without modifications, any scheme relating to such drainage proposed by all or any of the owners⁸.

1 As to the Secretary of State see PARA 4 ante.

2 The former procedure for making general regulations and the provisions as to inquiries for that purpose in the Mines and Quarries Act 1954 s 142, Sch 2 Pts I, III (all repealed) apply with the necessary modifications, to the procedure for making such drainage schemes and the power to make such schemes includes power, exercisable in like manner, to revoke or vary them: Mining Industry Act 1920 s 18(3) (amended by the Mines and Quarries Act 1954 ss 188, 195(2), Sch 4). As to the continuance of provisions of a repealed statute incorporated by reference in a later statute see *Clarke v Bradlaugh* (1881) 8 QBD 63, CA; and STATUTES. For the special procedure where schemes amend or repeal a local Act see note 6 infra.

3 For the meaning of 'mine' see PARA 5 ante.

4 For the meaning of 'quarry' see PARA 6 ante.

5 For the meaning of 'owner' see PARA 512 ante (definition applied by the Mines and Quarries Act 1954 s 188, Sch 4 (repealed)).

6 Any scheme which involves the amendment or repeal of a local Act of Parliament must, before it comes into force, be laid before each House of Parliament and, if either House within a period of 14 days presents an address to Her Majesty praying that the scheme be annulled, no further proceedings may be taken on it and the scheme may be revoked by Order in Council but without prejudice to anything previously done under it or to the making of a new scheme: see the Mining Industry Act 1920 s 18(3) proviso; and the Statutory Instruments Act 1946 s 5. As to the making of statutory instruments and as to the construction of references to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) para 941 et seq; STATUTES.

7 Mining Industry Act 1920 s 18(1) (amended by the Statute Law Revision Act 1927).

8 Mining Industry Act 1920 s 18(2).

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517. Health and safety regulations.

The Secretary of State¹ has power under the Health and Safety at Work etc Act 1974 to make health and safety regulations² for the general purposes of the health, safety and welfare provisions³ of that Act⁴. Without prejudice to the generality of this power, these regulations may for any of those general purposes make provision for specified purposes⁵. The powers which formerly existed under the Mines and Quarries Acts 1954 and 1969⁶ to make general and special regulations are superseded by the power to make health and safety regulations, and have been repealed⁷.

The power to make health and safety regulations⁸ includes power, in relation to any requirement of any such regulations that a person carrying on coal-mining operations⁹ is to be a participant in a mine rescue team¹⁰ approved by the Secretary of State, to provide: (1) for approval to be given or withdrawn from any scheme only after such consultation as may be specified or described in the regulations; and (2) for the approved schemes to be confined to those which appear to the Secretary of State to be such as to secure that it is reasonably practicable for every licensed operator¹¹ who is required to do so to participate, on reasonable terms, in an approved scheme¹².

The power to make health and safety regulations, the purposes for which such regulations may be made and the procedure for making them are all dealt with elsewhere in this work¹³.

1 As to the Secretary of State see PARA 4 ante.

2 As to such regulations see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424-423. These regulations include the Management and Administration of Health and Safety at Mines Regulations 1993, SI 1993/1897 (as amended) and the Quarries Regulations 1999, SI 1999/2024 (as amended) (see PARA 511 ante).

3 Ie for the purposes of the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 420 et seq.

4 See ibid s 15(1) (as substituted and amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 302, 349, 424.

5 See HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 424. The purposes specified include repealing or modifying the existing statutory provisions: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 425.

6 As to these Acts see PARA 511 note 3 ante.

7 See the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(1)(a), (2)(a), (3)(a), Sch 1 Pts I-III.

8 Ie regulations under the Health and Safety at Work etc Act 1974 s 15 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424-425): see the Coal Industry Act 1994 s 55(3).

9 For the meaning of 'coal-mining operations' see PARA 50 note 10 ante.

10 References to a mine rescue team are references to any scheme or other arrangements the participants in which are entitled, in an emergency, to the services of persons with the expertise and equipment required for rescuing individuals from underground: Coal Industry Act 1994 s 55(2).

11 For the meaning of 'licensed operator' see PARA 60 note 12 ante.

12 Coal Industry Act 1994 s 55(1). As to rescue organisation at mines see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 831.

13 See generally HEALTH AND SAFETY AT WORK.

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518. Powers as to exemptions, consents etc.

Any power conferred on the Health and Safety Executive¹ or an authorised inspector² by the Mines and Quarries Acts 1954 and 1969³, by regulations under them⁴, or by certain health and safety regulations⁵, to grant, give or impose an exemption, consent, approval, authority, direction, requirement, prohibition or restriction, or to make a determination, is to be construed as including power to vary or revoke the same, in the like manner and subject to the same conditions, if any⁶. Subject to any express provision of the Acts or of such regulations, any exemption, consent, approval or authority granted by the Health and Safety Executive or an inspector may be for a limited or unlimited period, and may be absolute or conditional⁷.

1 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

2 For the meaning of 'inspector' see PARA 511 note 4 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375.

3 As to these Acts see PARA 511 note 3 ante.

4 Ie under the Mines and Quarries Act 1954 s 141 (as amended): see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 789.

5 Ie health and safety regulations which expressly apply to all mines, any class of mines or a particular mine: ibid s 176(1) (s 176(1), (2) amended by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(1)(b), Sch 2 paras 3, 17; and the Mines and Quarries Act 1954 s 176(1) further amended by the Quarries Regulations 1999, SI 1999/2024, reg 47(2), Sch 2 Pt II). As to health and safety regulations applying to mines see the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897 (as amended); para 522 et seq post; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 748 et seq. As to health and safety regulations applying to quarries see the Quarries Regulations 1999, SI 1999/2024 (as amended); para 522 et seq post; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 838 et seq. For the meaning of 'mine' see PARA 5 ante; and for the meaning of 'quarry' see PARA 6 ante.

6 Mines and Quarries Act 1954 s 176(1) (as amended: see note 5 supra); Mines and Quarries (Tips) Act 1969 s 1(3)(a).

7 Mines and Quarries Act 1954 s 176(2) (as amended: see note 5 supra); Mines and Quarries (Tips) Act 1969 s 1(3)(a).

The Health and Safety Executive may, by a certificate in writing, exempt any mine, or part of a mine or class of mines or any person or class of persons from all or any of the prohibitions and requirements of the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897 (as amended), and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing: reg 38(1). Where a mine is, for the time being, solely used for a purpose other than for, or in connection with, the getting of minerals or ensuring the safety of another mine, the Health and Safety Executive may, by a certificate in writing, exempt that mine from all or any of the prohibitions and requirements imposed by or under: (1) the Mines and Quarries Act 1954; (2) orders and regulations made under or having effect as if made under that Act; and (3) health and safety regulations which expressly apply to all mines, to any class of mine to which the mine belongs, or the mine, and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing: reg 38(2). However, the Health and Safety Executive must not grant any such exemption unless, having regard to the circumstances of the case and in particular to: (a) the conditions, if any, which it imposes to attach to the exemption; and (b) any other requirements imposed by or under any enactment which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it: reg 38(3).

Similarly the Health and Safety Executive may, by a certificate in writing, exempt any quarry, part of a quarry or class of quarries, any person or class of persons, any plant or class of plant or any operation or class of

operations from all or any of the prohibitions and requirements of the Quarries Regulations 1999, SI 1999/2024 (as amended), and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing: reg 46(1). However, the Health and Safety Executive must not grant any such exemption unless, having regard to the circumstances of the case and in particular to: (i) the conditions, if any, it proposes to attach to the exemption; and (ii) any other requirements imposed by or under any enactment which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it: reg 46(2).

See further HEALTH AND SAFETY AT WORK.

UPDATE

518 Powers as to exemptions, consents etc

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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519. Inquiries.

The Secretary of State¹ may hold such inquiries as he may consider necessary or desirable for the purposes of his duties in connection with mines² or quarries³ and the mining or quarrying industry, and he and, if authorised to do so by him, the person appointed to hold the inquiry may, by order, require any person, subject to the payment or tender of reasonable attendance expenses, to attend as a witness and give evidence or produce any documents in his possession or power which relate to any matter in question at the inquiry and which are such as would be subject to production in a court of law⁴. The person appointed to hold the inquiry has power to take evidence on oath and for that purpose to administer oaths⁵.

This general power is in addition to any other powers to hold inquiries⁶.

1 As to the Secretary of State see PARA 4 ante.

2 For the meaning of 'mine' see PARA 5 ante.

3 For the meaning of 'quarry' see PARA 6 ante.

4 Mining Industry Act 1920 s 22(1), s 25. Notices of inquiries may be given or published in accordance with such directions as the Secretary of State may give: s 22(2). If any person so required to attend fails without reasonable excuse to comply with any provision of such an order, he is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 22(1) (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 98 note 12 ante.

5 Mining Industry Act 1920 s 22(1).

6 Ibid s 22(3).

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520. Cancellation or suspension of health and safety certificates.

On the conviction of an offence under the relevant statutory provisions, the holder of a certificate granted by the Health and Safety Executive¹ or of a certificate of qualification² (whether issued by the Health and Safety Executive or some other body), the court by which he is convicted may, on an application for that purpose made on behalf of the Health and Safety Executive, cancel or suspend the certificate in addition to or instead of imposing any other penalty to which the person convicted may be liable if, having regard to the nature of the offence and the circumstances in which it was committed, the court is of opinion that that person is unfit to continue to hold the certificate³. However, the court must not exercise this power unless:

- 204 (1) notice of intention to make an application has been served on the person convicted at the same time as the service or execution of the summons or warrant issued in pursuance of the information charging him with the offence of which he is convicted⁴; and
- 205 (2) the person has, on pleading to the charge, been given an opportunity to elect, but has not elected, to have the question of the cancellation or suspension of his certificate inquired into⁵.

Where a representation is made to the Health and Safety Executive by an inspector⁶ or otherwise that a certificate holder is, by reason of incompetence or gross negligence or misconduct in the performance of duties of his with respect to a mine⁷, unfit to continue to hold the certificate, the Health and Safety Executive may cause an inquiry to be made into whether or not he is fit to continue to hold the certificate by a tribunal which has power to cancel or suspend the certificate if it finds that, having regard to the offence and the circumstances in which it was committed, he is unfit to continue to hold the certificate⁸. The Health and Safety Executive must exercise this power where the certificate holder has made an election⁹ to have the question of cancellation or suspension inquired into¹⁰.

Where an application is made to a court for the cancellation or suspension of a certificate and the holder does not elect¹¹ to have the question of the cancellation or suspension inquired into¹², no inquiry into his conduct may be held by a tribunal on the same grounds as those considered by the court; and where an inquiry is held by a tribunal into the conduct of the holder of a certificate, no application to a court for the cancellation or suspension of the certificate may be made¹³ on the same grounds as those considered at the inquiry¹⁴.

The certificate holder may, after notice of intention to make an application for cancellation or suspension has been duly served on him, be required by the court dealing with an information or trying an indictment for an offence alleged to have been committed by him, or may be required by a tribunal making inquiry, to deliver up his certificate to the court or, as the case may be, the tribunal at the hearing¹⁵. A certificate so delivered up may be retained by the court or tribunal until the conclusion of the proceedings¹⁶. Where the court or tribunal cancels or suspends a certificate it must, at the conclusion of the proceedings, notify and also send the certificate to the Health and Safety Executive¹⁷. Where on an appeal¹⁸ the conviction of the holder of the certificate is quashed or the cancellation or suspension of the certificate is

quashed or varied, the court by which the conviction is quashed or the appeal is allowed must notify the Health and Safety Executive¹⁹.

The Health and Safety Executive may at any time, if it is shown to it to be just so to do, restore a certificate cancelled under these provisions or shorten the period for which a certificate is suspended²⁰. A suspended certificate is of no effect during the period of suspension²¹.

1 Ie under or by virtue of the Mines and Quarries Act 1954: see s 150(1) (as amended: see note 3 *infra*). As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 *et seq*.

2 Ie issued under the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 18.

3 Mines and Quarries Act 1954 s 150(1) (amended by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(1)(b), Sch 2 para 3; and the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 41(2), Sch 3 Pt II). Where a court cancels or suspends a certificate held by a person, he has the same right of appeal as if the cancellation or suspension were a sentence passed by the court on his conviction: Mines and Quarries Act 1954 s 150(2).

4 Ibid s 150(1) proviso (a).

5 Ibid s 150(1) proviso (b). The inquiry referred to is that provided for under s 150(3) (as amended): see the text to notes 6-10 *infra*.

6 For the meaning of 'inspector' see PARA 511 note 4 *ante*. As to inspectors see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375 *et seq*.

7 For the meaning of 'mine' see PARA 5 *ante*.

8 Mines and Quarries Act 1954 s 150(3) (amended by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, Sch 2 para 3; and the Quarries Regulations 1999, SI 1999/2024, reg 47(2), Sch 2 Pt II). As to the constitution and proceedings of the tribunal holding such an inquiry see PARA 521 *post*.

9 Ie under the Mines and Quarries Act 1954 s 150(1) proviso (b): see s 150(3) (as amended: see note 8 *supra*).

10 Ibid s 150(3) (as amended: see note 8 *supra*).

11 Ie under ibid s 150(1) proviso (b): see s 150(5).

12 Ie under ibid s 150(3) (as amended): see s 150(5).

13 Ie under ibid s 150(1) (as amended): see s 150(5).

14 Ibid s 150(5).

15 Ibid s 150(8), Sch 3 para 11.

16 Ibid Sch 3 para 12. However, a certificate delivered up to the court must be returned to the holder of it on his making an election under s 150(1) proviso (b): Sch 3 para 12 proviso.

17 Ibid Sch 3 para 13 (Sch 3 paras 13-15 amended by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, Sch 2 paras 3, 19). Where a certificate has been sent to the Health and Safety Executive under the Mines and Quarries Act 1954 Sch 3 para 13 (as amended), it must return the certificate to the holder: (1) on receipt of a notice that the conviction of its holder or, the cancellation or suspension of it, has been quashed; or (2) on the expiration of any period for which the certificate stands suspended (whether after conviction or appeal): Sch 3 para 15 (as so amended).

18 For the purposes of ibid Sch 3 Pt II (as amended), the bringing of proceedings before the High Court to quash a conviction by quashing order (formerly an order of certiorari) is deemed to be an appeal: Sch 3 para 16.

19 Ibid Sch 3 para 14 (as amended: see note 17 *supra*). However, where on an appeal by way of case stated the High Court remits the matter to a magistrates' court or Crown Court, notice of the order of the court on the remission must be sent to the Health and Safety Executive by the magistrates' court or the Crown Court, as the case may be: Sch 3 para 14 proviso (as so amended).

20 Ibid s 150(6) (amended by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, Sch 2 para 3).

21 Mines and Quarries Act 1954 s 150(7).

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521. Inquiries into fitness of certificate holders.

The tribunal holding an inquiry into the fitness of certificate holders¹ consists of a person or persons appointed by the Secretary of State², and may conduct the inquiry either alone or with the assistance of an assessor or assessors so appointed; but no person is to be appointed as the person, or one of the persons, constituting such a tribunal, or as an assessor to assist any such tribunal, after the day on which he attains the age of 70 years³. The Health and Safety Executive⁴ may pay to the person or persons constituting the tribunal and to any assessor appointed to assist it such remuneration and allowances as the Secretary of State may, with the approval of the Treasury, determine⁵.

The inquiry must be public and be held at such place as the Health and Safety Executive may appoint⁶. The Health and Safety Executive must, before the beginning of the inquiry, furnish to the person whose fitness to continue to hold a certificate is to be inquired into a statement of the case on which the inquiry is instituted⁷. The person may appear at the inquiry either in person or by counsel, solicitor or agent, and may give evidence and call such witnesses as he thinks fit⁸. At the conclusion of the inquiry the tribunal must send to the Health and Safety Executive a report containing a full statement of the case and the opinion of the tribunal on it and such report of, or extracts from, the evidence as the tribunal thinks fit⁹.

The tribunal, for the purposes of the inquiry, has power:

- 206 (1) to enter and inspect any place or building, the entry or inspection of which appears to the tribunal requisite¹⁰;
- 207 (2) by a summons signed by the tribunal to require any person to attend, at such time and place as is specified in the summons, to give evidence or to produce any documents in his custody or under his control which the tribunal considers it necessary to examine¹¹;
- 208 (3) to require a person appearing at the inquiry to furnish to any other person appearing, on payment of such fee, if any, as the tribunal thinks fit, a copy of any document offered, or proposed to be offered, in evidence by the first-mentioned person¹²;
- 209 (4) to take evidence on oath, and for that purpose to administer oaths, or, instead of administering an oath, to require the person examined to make and subscribe a declaration of the truth of the matter respecting which he is examined¹³;
- 210 (5) to adjourn the inquiry from time to time¹⁴; and
- 211 (6) subject to heads (1) to (5) above, to regulate its procedure¹⁵.

The tribunal may make such orders as it thinks fit respecting the payment of the costs and expenses of the inquiry¹⁶.

If a person (a) without reasonable excuse (proof of which lies on him) fails, after having the expenses (if any) to which he is entitled tendered to him, to comply with any summons or requisition of the tribunal; or (b) does any other thing which would, if the tribunal had been a court of law having power to commit for contempt, have been contempt of that court, the tribunal may, by instrument signed by it, certify the offence of that person to the High Court, which may then inquire into the alleged offence and after hearing any witnesses who may be

produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the High Court¹⁷.

1 lie under the Mines and Quarries Act 1954 s 150 (as amended) (see PARA 520 ante): see s 150(4), Sch 3 para 1.

2 As to the Secretary of State see PARA 4 ante.

3 Mines and Quarries Act 1954 Sch 3 para 1 (amended by the Judicial Pensions and Retirement Act 1993 s 26(10), Sch 6 para 61).

4 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

5 Mines and Quarries Act 1954 Sch 3 para 2 (Sch 3 paras 2-4, 6, 8 amended by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(1)(b), Sch 2 paras 3, 19). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

6 Mines and Quarries Act 1954 Sch 3 para 3 (as amended: see note 5 supra).

7 Ibid Sch 3 para 4 (as amended: see note 5 supra).

8 Ibid Sch 3 para 5. A person attending as a witness before the tribunal is entitled to be paid by the Health and Safety Executive such expenses as would be allowed to a witness attending on subpoena before a court of record, and any dispute as to the amount to be so allowed is to be referred by the tribunal to a master of the Supreme Court who, on request signed by the tribunal, must ascertain and certify the proper amount of the expenses: Sch 3 para 8 (as amended: see note 5 supra).

9 Ibid Sch 3 para 6 (as amended: see note 5 supra).

10 Ibid Sch 3 para 7(a).

11 Ibid Sch 3 para 7(b).

12 Ibid Sch 3 para 7(c).

13 Ibid Sch 3 para 7(d).

14 Ibid Sch 3 para 7(e).

15 Ibid Sch 3 para 7(f).

16 Ibid Sch 3 para 9. Any such order, on the application of any person entitled to the benefit of it, is enforceable by a magistrates' court as if the amount ordered to be paid were a sum adjudged to be paid by an order of that court: Sch 3 para 9.

17 Ibid Sch 3 para 10. As to contempt of court generally see CONTEMPT OF COURT.

UPDATE

521 Inquiries into fitness of certificate holders

NOTE 8--For 'Supreme Court' substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 4 (in force 1 October 2009: SI 2009/1604).

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(iii) Records, Returns and Information

522. Records of appointments.

Records of appointments in relation to mines¹ and quarries² must be made in the appropriate form and retained for a minimum period³.

1 For the meaning of 'mine' see PARA 5 ante.

2 For the meaning of 'quarry' see PARA 6 ante.

3 In relation to mines see the Management and Administration of Health and Safety at Mines Regulations 1993, SI 1993/1897, reg 35. In relation to quarries see the Quarries Regulations 1999, SI 1999/2024, reg 44. See further HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 393; HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 839.

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523. Information.

The Health and Safety Commission¹ has power, exercisable with the consent of the Secretary of State², to obtain from any person information which the Commission or an enforcing authority³ needs for the discharge of its functions⁴. This power is discussed elsewhere in this work⁵.

1 As to the Health and Safety Commission see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 367 note 10.

2 As to the Secretary of State see PARA 4 ante.

3 As to the meaning of 'enforcing authority' see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 352.

4 See the Health and Safety at Work etc Act 1974 s 27(1); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 369.

5 See HEALTH AND SAFETY AT WORK.

UPDATE

523 Information

NOTE 1--Health and Safety Commission replaced by the Health and Safety Executive: see Legislative Reform (Health and Safety Executive) Order 2008, SI 2008/960; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(iii) Records, Returns and Information/524. Facilities for inspection of the statutes, regulations etc.

524. Facilities for inspection of the statutes, regulations etc.

At all times at which persons are employed at a mine¹ suitable covered accommodation must be provided to which all employees are entitled to have access for the purpose of inspecting certain documents² required to be provided in it³.

It is the duty of the operator⁴ of a quarry⁵ to ensure that copies of all current instructions, rules and schemes⁶ are kept at the quarry and are given to any person at work at the quarry upon whom they impose duties and that they are comprehensible to all such persons to whom they apply⁷.

1 For the meaning of 'mine' see PARA 5 ante.

2 As to the documents to be provided in relation to mines see HEALTH AND SAFETY AT WORK.

3 In relation to mines see the Management and Administration of Health and Safety at Mines Regulations 1993, SI 1993/1897, reg 36. As to information books for employees at mines see the Mines and Quarries Act 1954 s 137 (as amended). See further HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 395; HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 752

4 For the meaning of 'operator' at a quarry see PARA 512 ante.

5 For the meaning of 'quarry' see PARA 6 ante.

6 Ie made under the Quarries Regulations 1999, SI 1999/2024 (as amended).

7 See *ibid* reg 10(1)(b); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 839.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(iii) Records, Returns and Information/525. Notification of information at mine or quarry.

525. Notification of information at mine or quarry.

Suitable notices showing information including the name and address of the owner and of the manager of a mine¹ must be provided in such place or places where they can readily be seen and read by persons employed there².

For quarries³ specified information⁴ must be notified in writing to the Health and Safety Executive⁵. The health and safety document⁶ and all the information notified in it must be made available to each employer of persons at work at the quarry and to all persons at work at the quarry⁷.

1 For the meaning of 'mine' see PARA 5 ante.

2 In relation to mines see the Management and Administration of Health and Safety at Mines Regulations 1993, SI 1993/1897, reg 37; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 752.

3 For the meaning of 'quarry' see PARA 6 ante.

4 See the Quarries Regulations 1999, SI 1999/2024, reg 45(2); paras 526, 528 post; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 838 et seq.

5 See ibid reg 45 (as amended); and HEALTH AND SAFETY AT WORK. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

6 Ie the document required by ibid reg 7: see PARA 535 note 7 post; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 839.

7 See ibid reg 7(3)(b); para 535 post; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 839.

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526. Notification of change of owner etc.

Where there is any change in the name, address and location of a mine¹, or any change in the name and address of the owner² of it, the owner must notify the Health and Safety Executive within 28 days³.

The operator⁴ of a quarry⁵ must notify the Health and Safety Executive in writing within 14 days of certain events⁶ including the appointment or change of the operator of such quarry⁷.

1 For the meaning of 'mine' see PARA 5 ante.

2 For the meaning of 'owner' see PARA 512 ante.

3 See the Management and Administration of Health and Safety at Mines Regulations 1993, SI 1993/1897, reg 7(2), Sch 2 Pt II; and HEALTH AND SAFETY AT WORK. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

4 For the meaning of 'operator' at a quarry see PARA 512 ante.

5 For the meaning of 'quarry' see PARA 6 ante.

6 See the Quarries Regulations 1999, SI 1999/2024, reg 45 (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 839 et seq.

7 See *ibid* reg 45(2)(c); and HEALTH AND SAFETY AT WORK.

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527. Service of documents.

The provisions of the Health and Safety at Work etc Act 1974 as to service of notices and other documents¹, which are dealt with elsewhere in this work², apply to notices and other documents required or authorised to be served, sent or given under the Mines and Quarries Acts 1954 and 1969³ or the subordinate legislation under them⁴.

1 See the Health and Safety at Work etc Act 1974 s 46.

2 See HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 388.

3 As to these Acts see PARA 511 note 3 ante.

4 See the Health and Safety at Work etc Act 1974 ss 46, 53(1) (as amended), Sch 1 (as amended); and HEALTH AND SAFETY AT WORK.

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528. Notification of beginning and ending of mining and quarrying operations.

A mine¹ must not be worked unless the owner² of it has notified the Health and Safety Executive³ of certain information⁴ at least 28 days in advance of the intended commencement of the mining operation⁵. Where a mine has been abandoned, and also where a seam, vein system, shaft or outlet ceases to be used or has been abandoned, the owner must notify the Health and Safety Executive of the event within 28 days of its occurrence⁶.

The operator⁷ of a quarry⁸ must ensure that, within 14 days of any the following events, written notice is given to the Health and Safety Executive: (1) the beginning of operations for the purpose of opening a quarry; (2) the abandonment of or ceasing of operations at a quarry⁹; and (3) the appointment or change of the operator of a quarry¹⁰.

1 For the meaning of 'mine' see PARA 5 ante.

2 For the meaning of 'owner' see PARA 512 ante.

3 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

4 As to the required information see the Management and Administration of Health and Safety at Mines Regulations 1993, SI 1993/1897, reg 7(1), Sch 2 Pt I; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 749.

5 See ibid reg 7(1); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 749.

6 See ibid reg 7(2), Sch 2 Pt II; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 749. In the case of a mine which was in existence or under construction on 1 October 1993 (ie the date of coming into force of the regulations), notification under the Mines and Quarries Act 1954 s 139(1) (repealed), in so far as it provided the information required by the Management and Administration of Health and Safety at Mines Regulations 1993, SI 1993/1897, Sch 2 is deemed to be notification under reg 7(1): reg 7(3). As to the duty to inform the Environment Agency of the abandonment of mines see PARA 529 post. Under the terms of the document required to be prepared by the Coal Authority and the Health and Safety Executive (see the Coal Industry Act 1994 s 4(1); and PARA 62 ante) the Health and Safety Executive informs the Coal Authority of, inter alia, information it receives of the start or the cessation of coal-mining operations or the abandonment of a mine or coal quarry: see PARA 62 note 5 ante. As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq. As to the Coal Authority see PARA 52 et seq ante.

7 For the meaning of 'operator' at a quarry see PARA 512 ante.

8 For the meaning of 'quarry' see PARA 6 ante.

9 Without prejudice to the duty to give notice under the Quarries Regulations 1999, SI 1999/2024, reg 45(1) in respect of an event in head (2) in the text, the operator of every quarry of coal must, within three months of the date on which the quarry of coal is abandoned, send to the Health and Safety Executive, or a body approved by it, an accurate plan of that quarry, and where such a plan has been so sent, that plan must be retained by the Executive or that body in accordance with arrangements approved by the Executive: see reg 45(3), (4) (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 838.

10 See ibid reg 45(1), (2); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 838.

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529. Duty to inform Environment Agency of abandonment of mines.

If, in the case of any mine¹, there is to be an abandonment² at any time after the expiration of the initial period³, it is the duty of the operator of the mine to give notice⁴ of the proposed abandonment to the Environment Agency⁵ at least six months before the abandonment takes effect⁶. For these purposes, 'abandonment', in relation to a mine, includes⁷:

- 212 (1) the discontinuance of any or all of the operations for the removal of water from the mine⁸;
- 213 (2) the cessation of working of any relevant seam, vein or vein system⁹;
- 214 (3) the cessation of use of any shaft or outlet of the mine¹⁰;
- 215 (4) in the case of a mine in which activities other than mining activities are carried on (whether or not mining activities are also carried on in the mine): (a) the discontinuance of some or all of those other activities in the mine; and (b) any substantial change in the operations for the removal of water from the mine¹¹.

A notice of abandonment¹² must contain such information (if any) as is prescribed¹³ for the purpose, which may include information about the operator's opinion as to any consequences of the abandonment¹⁴. A person who fails to give the required notice is guilty of an offence and liable, on summary conviction, to a fine not exceeding the statutory maximum¹⁵; and on conviction on indictment, to a fine¹⁶. A person is not guilty of such an offence if: (i) the abandonment happens in an emergency in order to avoid danger to life or health¹⁷; and (ii) notice of the abandonment, containing such information as may be prescribed, is given as soon as reasonably practicable after the abandonment has happened¹⁸. Where the operator of a mine is the official receiver acting in a compulsory capacity, he is not guilty of an offence by reason of any failure to give the required notice if, as soon as reasonably practicable (whether before or after the abandonment), he gives to the Environment Agency notice of the abandonment or proposed abandonment, containing such information as may be prescribed¹⁹.

Where the Environment Agency receives notice or otherwise learns of an abandonment or proposed abandonment in the case of any mine, and considers that, in consequence of the abandonment or proposed abandonment taking effect, any land has or is likely to become contaminated land²⁰, it is the duty of the Environment Agency to inform the local authority²¹ in whose area that land is situated of the abandonment or proposed abandonment²².

1 For the meaning of 'mine' see PARA 5 note 14 ante (definition applied by the Water Resources Act 1991 s 91A(2) (ss 91A, 91B both added by the Environment Act 1995 s 58)).

2 See the text to notes 7-11 infra.

3 'The initial period' means the period of six months beginning with the day on which the Water Resources Act 1991 s 91B(1) (as added) comes into force: s 91B(8) (as added: see note 1 supra). In so far as power is conferred on the Secretary of State to make regulations or orders, give directions or issue guidance or make provision with respect to the exercise of any such power, the Environment Act 1995 s 58 came into force on 21 September 1995 (see the Environment Act 1995 s 125(3); and the Environment Act 1995 (Commencement No 1) Order 1995, SI 1995/1983); otherwise it came into force on 1 July 1998 (see the Environment Act 1995 (Commencement No 11) Order 1998, SI 1998/604). As to the Secretary of State see PARA 4 ante.

4 Where a person gives notice under the Water Resources Act 1991 s 91B(1) (as added), he must publish prescribed particulars of, or relating to, the notice in one or more local newspapers circulating in the locality where the mine is situated: s 91B(6) (as added: see note 1 supra). The prescribed particulars for the purposes of s 91B(6) (as added) are: (1) the name and address of the mine; (2) the name and address of the operator; (3) the nature of each abandonment or proposed abandonment, specifying (if relevant) the appropriate provisions under s 91A(1)(a) (as added) (see heads (1)-(4) in the text; and notes 8-11 infra); (4) the date or dates of each abandonment or proposed abandonment; (5) the address at which notice under s 91B(1), (4)(b) or (5) (as added) (see the text and notes 6, 18, 19 infra) may be inspected; and (6) the provisions of s 91B (as added) under which the notice has been served: Mines (Notice of Abandonment) Regulations 1998, SI 1998/892, reg 3, Sch 2. See also note 13 infra.

5 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; WATER AND WATERWAYS vol 101 (2009) PARA 17.

6 Water Resources Act 1991 s 91B(1) (as added: see note 1 supra). The information to be included in a notice to the Environment Agency under s 91B(1) (as added) is as follows:

- 138 (1) the name and address of the operator and, if different, the owner of the mine (Mines (Notice of Abandonment) Regulations 1998, SI 1998/892, reg 2, Sch 1 para 1(1));
- 139 (2) details of any changes to the names and addresses referred to in head (1) supra likely to occur before the latest date for any abandonment specified in the notice (Sch 1 para 1(2));
- 140 (3) the nature and date of each proposed abandonment, specifying (if relevant) the appropriate provision or provisions under the Water Resources Act 1991 s 91A(1)(a) (as added) (see heads (1)-(4) in the text; and notes 8-11 infra) (Mines (Notice of Abandonment) Regulations 1998, SI 1998/892, Sch 1 para 1(3));
- 141 (4) the name and address of the mine, including an Ordnance Survey National Grid reference for its address (Sch 1 para 1(4));
- 142 (5) a description and schematic drawing showing the area, extent and depth below the surface of: (a) the mine; (b) where not all of the mine is to be abandoned, that part which it is proposed to abandon; (c) any relevant seam, vein or vein system; and (d) any shaft or outlet of the mine (Sch 1 para 1(5));
- 143 (6) the volume of water discharged to the surface from the mine, and from any part of the mine, to be abandoned, for the two years prior to the date of the notice (Sch 1 para 1(6));
- 144 (7) the latest information available to the operator on the extent and chemical composition of underground water in the worked areas of the mine (Sch 1 para 1(7));
- 145 (8) the projected volume of water discharged to the surface from the mine, and from any part of the mine, to be abandoned for the period from the date of the notice to the date of each abandonment specified in it (Sch 1 para 1(8));
- 146 (9) proposals for the monitoring of groundwater levels and the chemical composition of water in the worked areas of the mine from the date of the notice to the date of each abandonment specified in it (Sch 1 para 1(9));
- 147 (10) proposals to: (a) treat, lessen or prevent the discharge of water from the mine; or (b) treat water in the mine (Sch 1 para 1(10));
- 148 (11) the operator's opinion as to the likelihood of any of the following matters occurring as a consequence of the abandonment: (a) the flooding of any worked areas, such areas to be shown on a plan or a schematic drawing identifying the location and extent of such workings; (b) the migration of water to any other mine (whether or not abandoned) and the name of any such mine; (c) the recovery levels of ground water within the mine workings being reached and the period of time within which those levels will be reached; and (d) the discharge of water on to land or into surface water, and the location and chemical composition of any such discharge, together with the information on which the opinion is based (Sch 1 para 1(11));
- 149 (12) the operator's opinion as to the volume of water likely to be discharged to the surface from the mine to be abandoned, and from any part of that mine, for a period of at least two years from the date of the last abandonment specified in the notice, together with the information on which the opinion is based (Sch 1 para 1(12)).

7 'Abandonment' does not include any disclaimer under the Insolvency Act 1986 s 178 or s 315 (as amended) (power of liquidator, or trustee of a bankrupt's estate, to disclaim onerous property) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 472 et seq) by the official receiver acting in a compulsory capacity: Water Resources Act 1991 s 91A(1)(b) (as added: see note 1 supra). 'The official receiver' has the same meaning as it has in the Insolvency Act 1986 by virtue of s 399(1) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 31); Water Resources Act 1991 s 91A(2) (as so added). 'Acting in a compulsory capacity', in the case of the official receiver, means acting as: (1) liquidator of a company; (2) receiver or manager of a bankrupt's estate, pursuant to the Insolvency Act 1986 s 287 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 225 et seq); (3) trustee of a bankrupt's estate; (4) liquidator of an insolvent partnership; (5) trustee of an insolvent partnership; (6) trustee, or receiver or manager, of the insolvent estate of a deceased person: Water Resources Act 1991 s 91A(2) (as so added).

8 Ibid s 91A(1)(a)(i) (as added: see note 1 supra).

9 Ibid s 91A(1)(a)(ii) (as added: see note 1 supra). 'Relevant seam, vein or vein system', in the case of any mine, means any seam, vein or vein system for the purpose of, or in connection with, whose working any excavation constituting or comprised in the mine was made: s 91A(2) (as so added).

10 Ibid s 91A(1)(a)(iii) (as added: see note 1 supra).

11 Ibid s 91A(1)(a)(iv) (as added: see note 1 supra).

12 Ie under ibid s 91A(1) (as added).

13 'Prescribed' means prescribed in regulations; and 'regulations' means regulations made by the Secretary of State: ibid s 91A(2) (as added: see note 1 supra). As to the information to be contained in a notice of abandonment, or proposed abandonment and the particulars to be published in a local newspaper, see the Mines (Notice of Abandonment) Regulations 1998, SI 1998/892; notes 6 supra, 18, 19 infra.

14 Water Resources Act 1991 s 91B(2) (as added: see note 1 supra).

15 As to the statutory maximum see PARA 106 note 15 ante.

16 Water Resources Act 1991 s 91B(3) (as added: see note 1 supra).

17 Ibid s 91B(4)(a) (as added: see note 1 supra).

18 Ibid s 91B(4)(b) (as added: see note 1 supra). The information to be included in a notice to the Environment Agency under s 91B(4)(b) (as added) is as follows:

150 (1) the name and address of the operator and, if different, the owner of the mine (Mines (Notice of Abandonment) Regulations 1998, SI 1998/892, Sch 1 paras 1(1), 2(1));

151 (2) the nature and date of each abandonment, specifying (if relevant) the appropriate provision or provisions under the Water Resources Act 1991 s 91A(1)(a) (as added) (see heads (1)-(4) in the text; and notes 8-11 supra) (Mines (Notice of Abandonment) Regulations 1998, SI 1998/892, Sch 1 paras 1(3), 2(1));

152 (3) the name and address of the mine, including an Ordnance Survey National Grid Reference for its address (Sch 1 paras 1(4), 2(1));

153 (4) a description and schematic drawing showing the area, extent and depth below the surface of: (a) the mine; (b) where not all of the mine has been abandoned, that part which has been abandoned; (c) any relevant seam, vein or vein system; and (d) any shaft or outlet of the mine (Sch 1 paras 1(5), 2(1));

154 (5) the volume of water discharged to the surface from the mine, and from any part of the mine abandoned for the two years prior to the date of the notice (Sch 1 paras 1(6), 2(1));

155 (6) the latest information available to the operator on the extent and chemical composition of underground water in the worked areas of the mine (Sch 1 para 1(7));

156 (7) proposals to: (a) treat, lessen or prevent the discharge of water from the mine; or (b) treat water in the mine (Sch 1 para 1(10));

157 (8) the operator's opinion as to the likelihood of any of the following matters occurring as a consequence of the abandonment: (a) the flooding of any worked areas, such areas to be shown on a plan or a schematic drawing identifying the location and extent of such workings; (b) the

migration of water to any other mine (whether or not abandoned) and the name of any such mine; (c) the recovery levels of ground water within the mine workings being reached and the period of time within which those levels will be reached; and (d) the discharge of water on to land or into surface water, and the location and chemical composition of any such discharge, together with the information on which the opinion is based (Sch 1 para 1(11));

- 158 (9) the operator's opinion as to the volume of water likely to be discharged to the surface from the mine abandoned, and from any part of that mine, for a period of at least two years from the date of the last abandonment specified in the notice, together with the information on which the opinion is based (Sch 1 paras 1(12), 2(1));
- 159 (10) the nature of the emergency which necessitated the abandonment under the Water Resources Act 1991 s 91B(4)(a) (as added) (see the text to note 17 supra) (Mines (Notice of Abandonment) Regulations 1998, SI 1998/892, Sch 1 para 2(2)).

Where a person gives notice under the Water Resources Act 1991 s 91B(4)(b) (as added), he must publish prescribed particulars of, or relating to, the notice in one or more local newspapers circulating in the locality where the mine is situated: s 91B(6) (as so added).

19 Water Resources Act 1991 s 91B(5) (as added: see note 1 supra). The information to be included in a notice to the Environment Agency under s 91B(5) (as added), where the notice is given after the abandonment, is as follows:

- 160 (1) the name and address of the operator and, if different, the owner of the mine (Mines (Notice of Abandonment) Regulations 1998, SI 1998/892, Sch 1 paras 1(1), 3(1));
- 161 (2) the nature and date of each abandonment, specifying (if relevant) the appropriate provision or provisions under the Water Resources Act 1991 s 91A(1)(a) (as added) (see heads (1)-(4) in the text; and notes 8-11 supra) (Mines (Notice of Abandonment) Regulations 1998, SI 1998/892, Sch 1 paras 1(3), 3(1));
- 162 (3) the name and address of the mine, including an Ordnance Survey National Grid reference for its address (Sch 1 paras 1(4), 3(1));
- 163 (4) a description and schematic drawing showing the area, extent and depth below the surface of: (a) the mine; (b) where not all of the mine has been abandoned, that part which has been abandoned; (c) any relevant seam, vein or vein system; and (d) any shaft or outlet of the mine (Sch 1 paras 1(5), 3(1));
- 164 (5) the volume of water discharged to the surface from the mine abandoned, and from any part of that mine, for the two years prior to the date of the notice (Sch 1 paras 1(6), 3(1));
- 165 (6) the latest information available to the operator on the extent and chemical composition of underground water in the worked areas of the mine (Sch 1 paras 1(7), 3(1));
- 166 (7) proposals to: (a) treat, lessen or prevent the discharge of water from the mine; or (b) treat water in the mine (Sch 1 paras 1(10), 3(1));
- 167 (8) the operator's opinion as to the likelihood of any of the following matters occurring as a consequence of the abandonment: (a) the flooding of any worked areas, such areas to be shown on a plan or a schematic drawing identifying the location and extent of such workings; (b) the migration of water to any other mine (whether or not abandoned) and the name of any such mine; (c) the recovery levels of ground water within the mine workings being reached and the period of time within which those levels will be reached; and (d) the discharge of water on to land or into surface water, and the location and chemical composition of any such discharge, together with the information on which the opinion is based (Sch 1 paras 1(11), 3(1));
- 168 (9) the operator's opinion as to the volume of water likely to be discharged to the surface from the mine, and from any part of the mine abandoned, for a period of at least two years from the date of the last abandonment specified in the notice, together with the information on which the opinion is based (Sch 1 paras 1(12), 3(1));
- 169 (10) such information as demonstrates that the operator is a person to whom the Water Resources Act 1991 s 91B(5) (as added) applies (Mines (Notice of Abandonment) Regulations 1998, SI 1998/892, Sch 1 para 3(2)).

Where a person gives notice under the Water Resources Act 1991 s 91B(5) (as added), he must publish prescribed particulars of, or relating to, the notice in one or more local newspapers circulating in the locality where the mine is situated: s 91B(6) (as so added).

20 le within the meaning of the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC) (as added). As to contaminated land see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 760 et seq.

21 'Local authority' means: (1) any unitary authority; (2) any district council, so far as it is not a unitary authority; (3) the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively: Water Resources Act 1991 s 91B(8) (as added: see note 1 supra). 'Unitary authority' means: (a) the council of a county, so far as it is the council of an area for which there are no district councils; (b) the council of any district comprised in an area for which there is no county council; (c) the council of a London borough; (d) the council of a county borough in Wales: s 91B(8) (as so added).

22 Ibid s 91B(7) (as added: see note 1 supra).

UPDATE

529 Duty to inform Environment Agency of abandonment of mines

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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530. Fencing of abandoned mines and quarries.

It is the duty of the owner¹ of every mine² which has been abandoned or which has not been worked³ for a period of 12 months to secure that the surface entrance to every shaft⁴ or outlet is provided with an efficient inclosure, barrier, plug or other device to prevent persons from accidentally falling down the shaft or entering the outlet, and that the device provided is properly maintained⁵. This requirement does not, however, apply to mines which are not mines of coal, stratified ironstone, shale or fireclay and have not been worked⁶ since 9 August 1872⁷.

Certain shafts or outlets of mines not provided with the above safeguards and certain quarries⁸ constituting a danger to the public are deemed⁹ to be statutory nuisances¹⁰ and persons other than the owner of the mine or quarry may recover from the owner expenses incurred in connection with the abatement of such nuisances¹¹.

1 For the meaning of 'owner' see PARA 512 ante.

2 For the meaning of 'mine' see PARA 5 ante.

3 As to the working of mines see PARA 513 ante.

4 For the meaning of 'shaft' see PARA 5 note 14 ante.

5 Mines and Quarries Act 1954 s 151(1). This provision is expressly excepted from 'the existing statutory provisions' listed in the Health and Safety at Work etc Act 1974 s 53(1), Sch 1; thus it cannot be modified or repealed by health and safety regulations: see HEALTH AND SAFETY AT WORK. As to the proceedings and penalty for an offence relating to the fencing of abandoned mines and quarries see the Mines and Quarries Act 1954 ss 155, 163(1), 164 (all repealed, save in respect of contravention of s 151 (as amended)). For the meaning of 'maintained' see PARA 535 note 4 post.

6 Ie for the purpose of getting minerals (for the meaning of which see PARA 12 note 21 ante) or products of them: see *ibid* s 151(1) proviso.

7 *Ibid* s 151(1) proviso.

8 For the meaning of 'quarry' see PARA 6 ante.

9 Ie for the purposes of the Environmental Protection Act 1990 Pt III (ss 79-84) (as amended), Sch 3 (as amended): see NUISANCE vol 78 (2010) PARA 155 et seq.

10 See the Mines and Quarries Act 1954 s 151(2) (s 151(2), (3) amended by the Environmental Protection Act 1990 s 162(1), Sch 15 para 5); and NUISANCE vol 78 (2010) PARA 156.

11 See the Mines and Quarries Act 1954 s 151(3) (as amended: see note 10 supra); and NUISANCE vol 78 (2010) PARA 156.

UPDATE

530 Fencing of abandoned mines and quarries

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/ (iv) Management and Control of Mines and Quarries/A. APPOINTMENT OF MANAGERS/531. Appointment of managers and operators.

(iv) Management and Control of Mines and Quarries

A. APPOINTMENT OF MANAGERS

531. Appointment of managers and operators.

Subject to certain provisions¹ no mine² may be worked unless there is a suitably qualified and competent manager³. In certain circumstances, knowledge of the Welsh language is a matter to be considered when appointments are being made of a manager or temporary manager of a mine⁴.

The person entitled to work a quarry⁵ must not permit another person to be the operator⁶ of the quarry unless that person is suitable and has sufficient resources to be able to operate the quarry safely⁷.

1 Ie the Management and Administration of Health and Safety at Mines Regulations 1993, SI 1993/1897, reg 8(2)-(5) (appointment of manager or substitute), reg 15 (appointment of managers to manage parts of a mine): see reg 8(1).

2 For the meaning of 'mine' see PARA 5 ante.

3 See the Management and Administration of Health and Safety at Mines Regulations 1993, SI 1993/1897, regs 8, 15; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 749. As to the saving for persons managing certain small mines before 1 January 1957 (ie the date of commencement of the Mines and Quarries Act 1954) see s 192.

4 Where the natural language of communication of the persons employed at a mine, or of a substantial number of them, is Welsh, then in considering the qualification of candidates for appointments required to be made in the case of that mine, regard must be had to the possession of a knowledge of that language: *ibid* s 171 (amended by the Quarries Regulations 1999, SI 1999/2024, reg 47(2), Sch 2 Pt II).

5 For the meaning of 'quarry' see PARA 6 ante.

6 For the meaning of 'operator' at a quarry see PARA 512 ante.

7 See the Quarries Regulations 1999, SI 1999/2024, reg 5 et seq; para 535 post; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 838 et seq.

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532. Notification of appointments.

The owner¹ of a mine² must notify the Health and Safety Executive³ within 28 days of the date of appointment of: (1) a manager⁴; (2) a substitute manager⁵; and (3) the surveyor of the mine⁶.

The operator⁷ must ensure that written notice of the appointment or a change of the operator of a quarry⁸ is given within 14 days to the Health and Safety Executive⁹.

1 For the meaning of 'owner' see PARA 512 ante.

2 For the meaning of 'mine' see PARA 5 ante.

3 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

4 As to the appointment of managers of mines see PARA 531 ante; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 748.

5 As to the substitute manager see the Management and Administration of Health and Safety at Mines Regulations 1993, SI 1993/1897, reg 8(3); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 748.

6 See ibid reg 34; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 749.

7 For the meaning of 'operator' at a quarry see PARA 512 ante.

8 For the meaning of 'quarry' see PARA 6 ante.

9 See the Quarries Regulations 1999, SI 1999/2024, reg 45(1), (2)(c); para 528 ante; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 838 et seq.

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B. POWERS AND DUTIES OF OWNERS, MANAGERS AND OPERATORS

533. Duties of mine owners.

The owner¹ of every mine² must make such financial and other provision and take such other steps as may be necessary to secure that the mine is managed and worked in accordance with the relevant statutory provisions applicable to the mine, and is so planned and laid out as to enable that purpose to be readily secured³. The owner has certain duties as an employer, in regard to the appointment of managers and substitute managers⁵ and also in regard to the appointment of surveyors⁶.

In addition to the above duty thus imposed on the owner, there are specific duties relating to safety which are expressly imposed on the owner⁷. In particular the owner of every mine must ensure that no work is carried out at a mine unless a health and safety document⁸ has been prepared⁹. The owner must keep the document up to date, make it available to each employer of persons at work at the mine and ensure that the measures identified in the document are taken and that any plans included are followed¹⁰. The owner also has a duty to co-ordinate the implementation of all measures relating to health and safety of persons at work at the mine¹¹. For both employers¹² and owners at a mine there are duties to ensure compliance with certain additional health and safety requirements, including work permits, lighting, control of explosive atmospheres above ground, smoking and the use of open flames, fire-fighting equipment, written instructions and flammable materials taken below ground¹³. An employer must ensure that a person at work at a mine is provided with appropriate health surveillance before he is assigned any work¹⁴.

Subject to certain statutory defences, the owner of a mine is liable to prosecution for an offence in respect of the contravention¹⁵ of any statutory provision, whether or not a duty is thereby expressly imposed on the owner¹⁶.

1 For the meaning of 'owner' see PARA 512 ante.

2 For the meaning of 'mine' see PARA 5 ante.

3 Management and Administration of Health and Safety at Mines Regulations 1993, SI 1993/1897, reg 6(2). The general duties of mine owners were formerly imposed by the Mines and Quarries Act 1954 s 1 (now repealed), but are now imposed by the Management and Administration of Health and Safety at Mines Regulations 1993, SI 1993/1897, reg 6: see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 749. The Coal Mines (Owner's Operating Rules) Regulations 1993, SI 1993/2331, impose a duty on the owner of a coal mine to ensure that the mine is not worked unless there are rules in force made by the owner, suitable for that mine, set down in writing and notified to the Health and Safety Executive: see HEALTH AND SAFETY AT WORK vol 53 (2009) para 749. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

4 See Management and Administration of Health and Safety at Mines Regulations 1993, SI 1993/1897, reg 4; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 751.

5 See the Management and Administration of Health and Safety at Mines Regulations 1993, SI 1993/1897, regs 8, 15; para 531 ante; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 748.

6 See *ibid* reg 27 et seq; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 754.

7 See eg the Management and Administration of Health and Safety at Mines Regulations 1993, SI 1993/1897 (as amended); the Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005 (as

amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 748 et seq. As to the duty to fence abandoned and disused mines and quarries see the Mines and Quarries Act 1954 s 151 (as amended); and PARA 530 ante.

8 The 'health and safety document' is to be construed in accordance with the Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 4: reg 2(1). The document must:

- 170 (1) demonstrate that the risks to which persons at work at the mine are exposed have been assessed in accordance with the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 429) (Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 4(1)(a));
- 171 (2) demonstrate that adequate measures, including measures concerning the design, use and maintenance of the mine and its equipment, have been and will continue to be taken to safeguard the health and safety of the persons at work (reg 4(1)(b)); and
- 172 (3) include a statement of how the measures referred to in head (2) supra will be co-ordinated (reg 4(1)(c)).

The health and safety document must where appropriate also include:

- 173 (a) a plan detailing the equipment and measures required to protect persons at work at the mine from the risk of explosion (reg 4(2)(a));
- 174 (b) where toxic gases are or may be present in the atmosphere at the mine, in such concentration that the atmosphere may be harmful to the health of persons at work, a plan detailing the protective equipment and measures required to protect persons at work at the mine from the harmful atmosphere (reg 4(2)(c)); and
- 175 (c) in any zone below ground where rockbursts or gas outbursts may occur, an operating plan setting out as far as possible the susceptible zones and the measures necessary for the protection of persons at work in, approaching or traversing such zones (reg 4(2)(d)).

In relation to fire, the health and safety document must:

- 176 (i) include a fire protection plan detailing the likely sources of fire, and the precautions to be taken to protect against, to detect and to combat the outbreak and spread of fire (reg 4(5)(a) (reg 4(5) added by SI 1999/3242)); and
 - 177 (ii) in respect of every part of the mine other than any building on the surface of that mine:
- 14. (A) include the designation of persons to implement the plan, ensuring that the number of such persons, their training and the equipment available to them is adequate, taking into account the size of, and the specific hazards involved in, the mine concerned (Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 4(5)(b)(i) (as so added)); and
14
 - 15. (B) include the arrangements for any necessary contacts with external emergency services, particularly as regards rescue work and fire-fighting (reg 4(5)(b)(ii) (as so added)); and
15
 - 16. (C) be adapted to the nature of the activities carried on at that mine and the size of the mine and take account of the persons other than employees who may be present (reg 4(5)(b)(iii) (as so added)).
16

'Gas outburst' means a sudden release of gas with or without the projection of minerals or rocks; and 'rockburst' means a sudden failure of stopes, pillars, walls or other rock buttresses adjacent to or in the mine workings: reg 2(1).

9 See *ibid* reg 4(1); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 749.

10 See *ibid* reg 4(3) (as amended), reg 4(4); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 749.

11 See *ibid* reg 5; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 749.

12 'Employer' includes the owner if he employs persons at work at the mine: *ibid* reg 2(1).

13 See *ibid* reg 6, Sch 1; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 749.

14 See *ibid* reg 7; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 751.

15 'Contravention' includes, in relation to:

- 178 (1) a provision of the Mines and Quarries Acts 1954 and 1969, of an order made under those Acts or of regulations; or
- 179 (2) a direction, prohibition, restriction or requirement given or imposed by a notice served under or by virtue of those Acts by an authorised inspector (see PARA 511 note 4 ante); or
- 180 (3) a condition attached to an exemption, consent, approval or authority granted or given under or by virtue of those Acts by the Health and Safety Executive or an authorised inspector; or
- 181 (4) a prohibition or requirement imposed by or under health and safety regulations which expressly apply to all mines, any class of mine or a particular mine,

a failure to comply with the provision, direction, prohibition, requirement or condition; and 'contravene' is to be construed accordingly: Mines and Quarries Act 1954 s 182(1) (definition amended by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(1)(b), Sch 2 paras 3, 18(a); and the Quarries Regulations 1999, SI 1999/2024, reg 47(2), Sch 2 Pt II); Mines and Quarries (Tips) Act 1969 s 1(3)(a).

16 See the Mines and Quarries Act 1954 s 152 (as amended); the Mines and Quarries (Tips) Act 1969 s 1(3) (a); and HEALTH AND SAFETY AT WORK vol 53 (2009) para 877.

UPDATE

533 Duties of mine owners

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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534. Powers and duties of managers of mines.

Subject to any instructions given to him by or on behalf of the owner¹, the manager of a mine² has the management, command and control of the mine³.

In this connection the manager has a number of specific duties⁴. A mine may not be worked⁵ unless it is under the daily personal supervision of the manager⁶ who has specific statutory duties which must be fulfilled as far as is practicable⁷. These specific duties include: (1) the establishment (with the owner) of a management structure⁸; (2) duties in regard to the safe installation and commissioning, inspection, examination, testing and maintenance of plant and equipment by suitably qualified and competent persons⁹; (3) obligations relating to: (a) the supply of materials, plant and equipment; (b) the investigation and remedy of complaints about such material, plant and equipment; (c) arrangements for recording the location at all times of persons at work at the mine; (d) measures for the reporting of danger; (e) the monitoring of barometric pressure¹⁰; and (f) the use and handling of hydraulic fluids¹¹.

1 For the meaning of 'owner' see PARA 512 ante.

2 For the meaning of 'mine' see PARA 5 ante.

3 See the Management and Administration of Health and Safety at Mines Regulations 1993, SI 1993/1897, reg 9; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 748.

4 See generally the Management and Administration of Health and Safety at Mines Regulations 1993, SI 1993/1897 (as amended); the Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005 (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 748 et seq.

5 As to the working of mines see PARA 513 ante; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 748 et seq.

6 See the Management and Administration of Health and Safety at Mines Regulations 1993, SI 1993/1897, reg 9(2); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 748.

7 See *ibid* reg 13(1); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 829.

8 See *ibid* reg 10; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 748, 750.

9 See *ibid* regs 11, 12; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 753, 756.

10 See *ibid* reg 13; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 750.

11 See the Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 8; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 750. 'Hydraulic fluid' means a fluid used for the transmission of hydrostatic or hydrokinetic mechanical energy: reg 2(1).

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535. Powers and duties of operators of quarries.

The person entitled to work a quarry¹ must not permit another person to be the operator² of the quarry unless that person is suitable and has sufficient resources to be able to operate the quarry safely³. The operator has a general duty to take the measures necessary to ensure, so far as reasonably practicable, that its quarry and its plant are designed, constructed, equipped, commissioned, operated and maintained⁴ in such a way that persons at work can perform the work assigned to them without endangering their own or others' health and safety⁵.

There are a number of specific duties in regard to health and safety in quarries⁶. The quarry operator must ensure that no work is carried out at the quarry unless a health and safety document⁷ has been prepared, kept up to date and made available to employers and to all persons at work at the quarry and that the relevant measures identified in the document are taken and any plans followed⁸. Related to this is the operator's duty to establish the required management structure to enable the quarry to be operated in accordance with the health and safety document; to make the appropriate records and appointments; to review or revise the management structure and; to ensure that each person in the management structure is provided with a copy of the relevant parts of the health and safety document⁹. The operator must ensure that persons undertaking work at the quarry have the required training and competence¹⁰. He must ensure that rules are in place at the quarry for securing the health and safety of persons at the quarry and the safe use of equipment¹¹. He must ensure that the required reviews of health and safety measures are carried out¹². The operator also has extensive duties in regard to the systematic inspection¹³, maintenance and testing of the quarry, its buildings and plant, and the preparation of the required written reports¹⁴. The operator has further duties in regard to the design, construction, maintenance and precautions of benches and haul roads¹⁵; rules to control the risks to persons at the quarry arising from the use of vehicles¹⁶ at the quarry¹⁷; escape and rescue facilities at the quarry¹⁸; and barriers discouraging trespass around the boundary of the quarry¹⁹.

The quarry operator must ensure that a number of additional health and safety requirements²⁰ are complied with as appropriate having regard to the features of the quarry, the nature and circumstances of the work carried on there or to a specific risk²¹. These requirements relate to permits to work (including carrying out hazardous operations or operations that may cause serious hazards), safety drills, fire and explosion hazards, control of harmful and explosive atmospheres, danger areas and lighting²².

The operator has further duties²³ relating to explosives²⁴ at a quarry²⁵. These duties include such matters as safe and secure storage, transport and use, the appointment of explosive supervisors, the drawing up of suitable shotfiring²⁶ rules and specifications, the supervision of shotfiring and taking specified steps in the case of misfires²⁷. There are a number of prohibited activities in relation to explosives²⁸.

The operator must make arrangements to promote health, safety and welfare measures and check the effectiveness of such measures through the appointment of a committee with powers of inspection²⁹.

1 For the meaning of 'quarry' see PARA 6 ante.

2 For the meaning of 'operator' at a quarry see PARA 512 ante.

3 See the Quarries Regulations 1999, SI 1999/2024, reg 5(1); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 838 et seq. There are certain related requirements in regard to the records that must be made and kept: see reg 5(2)-(4).

4 'Maintained' with respect to the quarry and its plant means maintained, where necessary to secure the health and safety of any person, in an efficient state, in efficient working order and in good repair; and 'maintenance' is to be construed accordingly: reg 2(1).

5 See *ibid* reg 6(1); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 839. For related duties see reg 6(2)-(4).

6 See generally the Quarries Regulations 1999, SI 1999/2024 (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 838 et seq.

7 The health and safety document is the document required in accordance with *ibid* reg 7: reg 2(1). The document must:

- 182 (1) demonstrate that the risks to which persons at work at the quarry are exposed have been assessed in accordance with the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 429) (Quarries Regulations 1999, SI 1999/2024, reg 7(1)(a) (amended by SI 1999/3242));
- 183 (2) demonstrate that adequate measures, including measures concerning the design, use and maintenance of the quarry and of its plant, will be taken to safeguard the health and safety of persons at the quarry, and in the area immediately surrounding the quarry who are directly affected by the activities of the quarry (Quarries Regulations 1999, SI 1999/2024, reg 7(1)(b));
- 184 (3) include a statement of how the measures referred to in head (2) *supra* will be co-ordinated (reg 7(1)(c));
- 185 (4) give details of the management structure (see reg 8; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 839) and sets out the authority and duties of each person in the management structure (reg 7(1)(d)); and
- 186 (5) record the following information:
 - 17. (a) the rules required by reg 10(1)(a) (see the text and note 11 *infra*) (reg 7(1)(e)(i));
17
 - 18. (b) the arrangements for the review of safety measures in accordance with reg 11 (see the text and note 12 *infra*) (reg 7(1)(e)(ii));
18
 - 19. (c) details of the inspection, maintenance and testing schemes prepared in accordance with reg 12 (reg 7(1)(e)(iii));
19
 - 20. (d) the rules made under reg 14 (see the text and note 17 *infra*) controlling risks from vehicles (reg 7(1)(e)(iv));
20
 - 21. (e) details of the permit to work system required by reg 18 (see the text and note 22 *infra*) (reg 7(1)(e)(v));
21
 - 22. (f) the shotfiring rules required by reg 25(2) (see the text and notes 26-27 *infra*) (reg 7(1)(e)(vi));
22
 - 23. (g) the excavations and tips rules required by reg 31 (see PARA 555 *post*) (reg 7(1)(e)(vii));
23
 - 24. (h) the conclusions of any appraisal or assessment of an excavation or tip undertaken in accordance with reg 32 (see PARA 556 *post*) (reg 7(1)(e)(viii)); and
24
 - 25. (i) the arrangements for health surveillance required by reg 43 (see note 29 *infra*) (reg 7(1)(e)(ix)).
25

In addition to the matters referred to heads (1)-(5) *supra*, the health and safety document must where appropriate also include:

- 187 (i) a plan detailing the equipment and measures required to protect persons at work at the quarry from the risk of explosion (reg 7(2)(a));
 - 188 (ii) where toxic gases are or may be present in the atmosphere at the quarry in such concentration that the atmosphere may be harmful to the health of persons at work, a plan detailing the protective equipment and measures required to protect persons at work at the quarry from the harmful atmosphere (reg 7(2)(a)); and
 - 189 (iii) a diagram of the quarry indicating those areas to which the regulations do not apply by virtue of reg 4(2)(c) (see PARA 511 ante) (reg 7(2)(a)).
- 8 See *ibid* reg 7(1), (3), (4); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 839.
- 9 See *ibid* reg 8; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 839. Note that each person in the management structure must carry out the duties assigned to him in the health and safety document for the protection of the health and safety of persons at work at the quarry: see reg 7(5).
- 10 See *ibid* reg 9; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 839.
- 11 See *ibid* reg 10; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 839. The operator also has a related duty to ensure that copies of all instructions, rules and schemes are kept at the quarry, are given to all relevant workers and are comprehensible to them and that they are complied with: see PARA 524 ante.
- 12 See *ibid* reg 11; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 839.
- 13 'Inspection' means such visual or more rigorous inspection by a competent person as is appropriate for the purpose: *ibid* reg 12(3). 'Competent' in relation to a person means a person with sufficient training, experience, knowledge and other qualities to enable him properly to undertake the duties assigned to him; and 'competence' is to be construed accordingly: reg 2(1).
- 14 See *ibid* reg 12; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 840.
- 15 See *ibid* reg 13; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 840.
- 16 'Vehicle' means any mechanically propelled vehicle (including mechanically propelled plant): *ibid* reg 2(1).
- 17 See *ibid* reg 14; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 840.
- 18 See *ibid* reg 15; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 840.
- 19 See *ibid* reg 16; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 840.
- 20 *le* under *ibid* Pt IV (regs 17-23).
- 21 See *ibid* reg 17.
- 22 See *ibid* reg 18-23; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 841.
- 23 *le* under *ibid* Pt V (regs 24-29).
- 24 'Explosives' means explosive articles or explosive substances; 'explosive article' means an article containing one or more explosive substances; and 'explosive substance' means: (1) a solid or liquid substance; or (2) a mixture of solid or liquid substances or both, which is capable by chemical reaction in itself of producing gas at such a temperature and pressure and at such a speed as could cause damage to surroundings or which is designed to produce an effect by heat, light, sound, gas or smoke or a combination of these as a result of non-detonative self-sustaining exothermic chemical reactions: *ibid* reg 2(1) (definitions substituted by SI 2002/2174).
- 25 See the Quarries Regulations 1999, SI 1999/2024, reg 24.
- 26 A 'shotfirer' means a person appointed pursuant to *ibid* reg 25(2)(a)(ii) (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 842) to be responsible for shotfiring operations: reg 2(1). 'Shotfiring operations' includes: (1) checking to ensure that the blasting specification is still appropriate for the site conditions at the time the blasting is to take place; (2) mixing explosives; (3) priming a cartridge; (4) charging and stemming a shothole; (5) linking or connecting a round of shots; (6) withdrawal and sheltering of persons; (7) inspecting and testing a shotfiring circuit; (8) firing a shot; and (9) checking for misfires: reg 2(1). 'Misfire' means an occurrence in

relation to the firing of shots where: (a) testing before firing reveals broken continuity which cannot be rectified; or (b) a shot or any part of a shot fails to explode when an attempt is made to fire it: reg 2(1).

27 See *ibid* regs 25-26, 28; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 842.

28 See *ibid* reg 29; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 842.

29 See *ibid* reg 40; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 843. As to the duty of every employer and person at work to co-operate with the operator to enable him to comply with the relevant statutory provisions see *ibid* reg 39; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 843. As to the duties of an employer not to employ anyone at a quarry unless there is an operator and to comply with the relevant statutory provisions see *ibid* reg 41 and; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 843. As to the obligation of every person at work at a quarry to carry out the duties allocated to him taking into consideration his and others' health and safety, and to comply with the operator's rules made under reg 10 (see the text and note 11 *supra*) see *ibid* reg 42; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 843. As to the duty of every employer to ensure, where health surveillance under the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 6 (see PARA 533 *ante*; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 435) is required in respect of any work to which a person is to assigned, that the surveillance commences before the person starts the work see the Quarries Regulations 1999, SI 1999/2024, reg 43 (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 843.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(v) General Welfare/536. Sanitary conveniences.

(v) General Welfare

536. Sanitary conveniences.

The manager of every mine¹ must provide sufficient and suitable sanitary conveniences² above and below ground including, where required, separate accommodation for persons of each sex³; and the conveniences so provided must be kept clean, properly maintained and reasonably lit⁴. Regulations make provision regarding the location, construction, equipment, cleaning and use of such sanitary conveniences⁵.

1 For the meaning of 'mine' see PARA 5 ante.

2 'Sanitary conveniences' includes urinals, water-closets, earth-closets, ash-pits, privies and any similar convenience: Mines and Quarries Act 1954 s 182(1).

3 Ibid s 94(1).

4 Ibid s 94(2).

5 In respect of mines of coal, stratified ironstone, shale and fireclay, provision for the location, construction, equipment, cleaning and use of such conveniences is made by the Coal and Other Mines (Sanitary Conveniences) Regulations 1956 (contained in the Coal and Other Mines (Sanitary Conveniences) Order 1956, SI 1956/1776, Schedule (amended by the Employment Act 1989 s 9, Sch 2 Pt II)). It is an offence for a person to relieve his bowels otherwise than in a sanitary convenience: Coal and Other Mines (Sanitary Conveniences) Regulations 1956, reg 5(1); cf *Senior v Brodsworth Main Colliery Co Ltd* (1917) 86 LJKB 1387, CA. With respect to other mines see the Miscellaneous Mines (General) Regulations 1956, reg 73 (amended by the Employment Act 1989 Sch 2 Pt II). The Miscellaneous Mines (General) Regulations 1956 are contained in the Miscellaneous Mines Order 1956, SI 1956/1778, Sch 1 (amended by the Employment Act 1989 Sch 2 Pt II; and by SI 1983/994; SI 1993/302; SI 1993/1897). Both sets of regulations took effect as if made under the Mines and Quarries Act 1954 s 141 (repealed so far as relevant), but continue in force by virtue of the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 7(3): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 343. Note that the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 456 et seq) do not apply to a workplace located below ground at a mine: see reg 3(1)(c) (substituted by SI 1995/2036).

UPDATE

536 Sanitary conveniences

NOTE 5--1989 Act s 9, Sch 2 Pt II amended: Statute Law (Repeals) Act 2004.

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537. Drinking water, washing and changing.

An adequate supply of wholesome drinking water must be provided and maintained at suitable points conveniently accessible to all employees on the surface of every mine¹. Regulations² require the provision and maintenance, at certain mines³, of suitable accommodation for changing and drying clothes and for taking meals⁴.

1 Mines and Quarries Act 1954 s 97. For the meaning of 'mine' see PARA 5 ante.

2 See the Miscellaneous Mines (General) Regulations 1956, reg 72 (contained in the Miscellaneous Mines Order 1956, SI 1956/1778, Sch 1); and PARA 536 note 5 ante.

3 I.e. mines other than of coal, stratified ironstone, shale or fireclay: see the Miscellaneous Mines (General) Regulations 1956, reg 1.

4 Ibid reg 72. Health and safety regulations may now be made for these purposes: see generally HEALTH AND SAFETY AT WORK. Note that the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 456 et seq) do not apply to a workplace located below ground at a mine: see reg 3(1)(c) (substituted by SI 1995/2036).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(v) General Welfare/538. Vermin in mines.

538. Vermin in mines.

Without prejudice to his general statutory obligations to prevent damage by pests¹, the owner² of every mine must take the necessary steps to ensure that all parts of the mine below ground are kept free from rats and mice³.

1 The Mines and Quarries Act 1954 s 95 (as amended) does not exclude the application of the Prevention of Damage by Pests Act 1949 (see AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 1021; ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 861 et seq) to parts of mines below ground: Mines and Quarries Act 1954 s 95(2). For the meaning of 'mine' see PARA 5 ante.

2 For the meaning of 'owner' see PARA 512 ante. The manager as such is not liable for the contravention by the owner of a provision which expressly imposes a duty on the owner: see *ibid* s 152(4) (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 877.

3 *Ibid* s 95(1) (amended by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(1)(a), Sch 1 Pt I).

UPDATE

538 Vermin in mines

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(v) General Welfare/539. Care of animals.

539. Care of animals.

The employment of horses at mines of coal, stratified ironstone, shale and fireclay is governed by regulations¹, which: (1) prohibit the taking below ground of any horse² which is less than four years old, or blind, or which has not been certified as free from glanders³; (2) provide for periodical veterinary examinations⁴; (3) restrict the carrying of horses on vehicles⁵ and prohibit the riding of them below ground⁶; (4) lay down the maximum hours of work⁷; (5) require the appointment, and specify the duties, of horse-keepers⁸; (6) impose requirements as to stabling⁹; and (7) make general provision for the health and welfare of horses at rest and at work¹⁰.

1 See the Coal and Other Mines (Horses) Regulations 1956 (contained in the Coal and Other Mines (Horses) Order 1956, SI 1956/1777), which took effect as if made under the Mines and Quarries Act 1954 s 141 (repealed so far as relevant), but continue in force by virtue of the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 7(3): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 343. Requirements with respect to the management of animals may now be imposed by health and safety regulations: see generally HEALTH AND SAFETY AT WORK.

2 'Horse' includes pony, mule and donkey: Coal and Other Mines (Horses) Regulations 1956, reg 16(1).

3 See *ibid* reg 3.

4 See *ibid* reg 4.

5 See *ibid* reg 5.

6 See *ibid* reg 6.

7 See *ibid* reg 7.

8 See *ibid* regs 8-10.

9 See *ibid* regs 11-12.

10 See *ibid* regs 13-15.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/A. SECURITY OF TIPS ASSOCIATED WITH MINES/540. The legislation.

(vi) Tips

A. SECURITY OF TIPS ASSOCIATED WITH MINES

540. The legislation.

The security of tips¹ associated with mines² is regulated by the security provisions of the Mines and Quarries (Tips) Act 1969³, which came into operation on 30 June 1969⁴ and are to be construed as one with the Mines and Quarries Act 1954⁵, and by regulations under those provisions⁶. Every tip to which those provisions apply⁷ must be made and kept secure⁸.

1 For the meaning of 'tip' see PARA 541 post.

2 As to the mine with which a tip is associated see PARA 542 post. For the meaning of 'mine' see PARA 5 note 14 ante (definition applied by the Mines and Quarries (Tips) Act 1969 s 1(3)(a); see note 5 infra).

3 *le* *ibid* Pt I (ss 1-10) (as amended), which may be cited with the Mines and Quarries Act 1954 as the Mines and Quarries Acts 1954 and 1969: Mines and Quarries (Tips) Act 1969 s 38(2). See also note 5 infra. Part I (as amended) does not extend to Northern Ireland: s 38(5). For the purposes of Pt I (as amended) and of the Mines and Quarries Act 1954 the mine or quarry with which a tip is associated is determined as follows: (1) in the case of a tip on premises which are deemed to form part of a mine or quarry for the purposes of the Mines and Quarries Act 1954, the tip is associated with that mine or quarry; (2) in the case of a tip not falling within head (1) *supra* but on premises which, at any time after the commencement of the Mines and Quarries Act 1954, were deemed to form part of a mine or quarry for the purposes of that Act, the tip is associated with that mine or quarry (or, as the case may be, the last such mine or quarry); and (3) in any other case, the tip is associated with the mine or quarry from which refuse was deposited on the tip, or, in the case of a tip which was used for the deposit of refuse from two or more mines or quarries, such one of those mines or quarries as the Health and Safety Executive may direct: Mines and Quarries (Tips) Act 1969 s 10(2) (s 10(1)-(3) amended, and s 10(4) added, by the Quarries Regulations 1999, SI 1999/2024, reg 47(4), Sch 4 Pt I). Subject to the Mines and Quarries (Tips) Act 1969 s 10(4) (as added), any reference in Pt I (as amended) to any other enactment is to be taken as referring to that enactment as amended by or under any other enactment, including Pt I (as amended): s 10(3) (as so amended). For the purposes of Pt II (ss 11-36) (as amended), s 10(2) (as amended) is to be read as applying to quarries as it does to mines; and the references to the Mines and Quarries Act 1954 in heads (1) and (2) *supra* are to be read as references to that Act as in force immediately before the coming into force of the Quarries Regulations 1999, SI 1999/2024 (as amended): Mines and Quarries (Tips) Act 1969 s 10(4) (as so added). As to Pt II (as amended) see PARA 561 *et seq post*. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 *et seq*.

4 See the Mines and Quarries (Tips) Act 1969 s 38(3); and the Mines and Quarries (Tips) Act 1969 (Commencement No 1) Order 1969, SI 1969/804.

5 Mines and Quarries (Tips) Act 1969 s 1(3). Without prejudice to the generality of that provision, any reference in the Mines and Quarries Act 1954 to the Act of 1954 includes a reference to the Mines and Quarries (Tips) Act 1969 Pt I (as amended), and expressions used in the Act of 1954 have the same meaning in the Mines and Quarries (Tips) Act 1969 Pt I (as amended) as in the Act of 1954 (Mines and Quarries (Tips) Act 1969 s 1(3)(a)); and the Act of 1954 has effect subject to modifications set out in the Mines and Quarries (Tips) Act 1969 s 1(3)(b), Sch 1 (s 1(3)(b)). See also note 3 *supra*. For the effect of a provision that statutes are to be construed as one see STATUTES. For offences in respect of contraventions see PARA 550 post.

6 *le* the Mines and Quarries (Tips) Regulations 1971, SI 1971/1377 (as amended): see PARA 545 *et seq post*.

7 See PARA 541 post.

8 Mines and Quarries (Tips) Act 1969 s 1(1). 'Secure' is not defined, but it is submitted that it imports a physical condition of stability which will ordinarily result in safety: see *Brown v National Coal Board* [1962] AC 574 at 590, [1962] 1 All ER 81 at 85, HL, per Lord Radcliffe. As to stability see PARA 561 note 2 post.

UPDATE

540-550 Security of Tips Associated with Mines

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/A. SECURITY OF TIPS ASSOCIATED WITH MINES/541. Tips to which the legislation applies.

541. Tips to which the legislation applies.

For the purposes of Part I of the Mines and Quarries (Tips) Act 1969¹, 'tip' means an accumulation or deposit of refuse from a mine² (whether in a solid state or in solution or suspension) other than an accumulation or deposit situated underground, and where any wall or other structure retains or confines a tip then, whether or not that wall or structure is itself composed of refuse, it is deemed to form part of the tip³.

A tip is one to which the security provisions of the Act⁴ apply if either: (1) it is on premises which are deemed⁵ to form part of a mine by virtue of that part of the definition of a mine⁶ which relates to premises for the time being used for the deposit of refuse⁷; or (2) it is not on such premises but the mine with which it is associated⁸ has not been abandoned⁹ and the premises on which the tip is situated continue to be occupied exclusively¹⁰ by the owner of that mine¹¹. For the purposes of the security provisions, a tip is an 'active tip' if it falls under head (1) above, and a 'closed tip' if it falls under head (2) above¹².

If part, but not the whole, of any premises on which a tip is situated is occupied exclusively by the owner of a mine and, by reason only that the whole of those premises is not so occupied, the tip is not otherwise¹³ one to which the security provisions apply, then the tip is deemed to be an active tip¹⁴ or a closed tip, as the case may be¹⁵; but the Health and Safety Executive¹⁶ may direct that the whole or such part of the tip as may be specified in the direction is to cease¹⁷ to be a tip to which those provisions apply¹⁸. If the whole or any part of a tip which would otherwise¹⁹ be one to which those provisions apply is appropriated to some use which, in the opinion of the Health and Safety Executive, is inconsistent with the resumption of tipping operations²⁰ on the tip or on a particular part of it, the Health and Safety Executive may direct that the whole or such part of the tip as may be specified in the direction is to cease²¹ to be a tip to which those provisions apply²².

Certain regulations made under the Mines and Quarries (Tips) Act 1969 make special provision as to classified tips²³. Classified tips are those of which the dimensions, and in certain instances the gradient of the underlying land, exceed limits prescribed according to whether the refuse of which the tips consist is accumulated or deposited wholly or mainly in a solid state and wholly or mainly in solution or suspension²⁴.

1 Ie the Mines and Quarries (Tips) Act 1969 Pt I (ss 1-10) (as amended).

2 For the meaning of 'mine' see PARA 5 note 14 ante (definition applied by *ibid* s 1(3)(a)).

3 Ibid s 2(1) (amended by the Quarries Regulations 1999, SI 1999/2024, reg 47(4), Sch 4 Pt I); Mines and Quarries (Tips) Act 1969 s 10(1)(a). For the meaning of 'tip' for the purposes of the Quarries Regulations 1999, SI 1999/2024, see PARA 6 note 13 ante.

4 Ie the Mines and Quarries (Tips) Act 1969 Pt I (ss 1-10) (as amended).

5 Ie for the purposes of the Mines and Quarries Act 1954: see the Mines and Quarries (Tips) Act 1969 s 2(1) (as amended).

6 Ie by virtue of the Mines and Quarries Act 1954 s 180(4) as in force immediately before the coming into force of the Quarries Regulations 1999, SI 1999/2024: see the Mines and Quarries (Tips) Act 1969 s 2(2)(a) (as amended: see note 7 *infra*); and PARAS 5 note 13, 6 note 7 ante.

7 Ibid s 2(2)(a) (s 2(2)(a), (b) amended by the Quarries Regulations 1999, SI 1999/2024, reg 47(4), Sch 4 Pt I).

8 As to the mine with which a tip is associated see PARA 542 post.

9 See PARAS 513, 528-530 ante, 548 post.

10 It is submitted that exclusive occupation does not mean the power of excluding all others from the premises, but does mean the exclusive power to exercise the rights given to the owner of the premises: see *Back v Daniels* [1925] 1 KB 526 at 543, CA, per Scrutton LJ.

11 Mines and Quarries (Tips) Act 1969 s 2(2)(b) (as amended: see note 7 supra). For the meaning of 'owner' in relation to a mine see PARA 512 ante.

12 Ibid s 2(2) (as amended: see note 7 supra), s 10(1)(a). As to disused tips see PARA 561 et seq post.

13 Ie apart from ibid s 2(3) (as amended).

14 If it is deemed to be an active tip, the premises on which it is situated are to be treated, for the purposes of the Mines and Quarries Acts 1954 and 1969 (as to which see PARA 511 note 3 ante), as forming part of the mine with which it is associated: Mines and Quarries (Tips) Act 1969 s 2(3)(a) (amended by the Quarries Regulations 1999, SI 1999/2024, reg 47(5), Sch 4 Pt II).

15 Mines and Quarries (Tips) Act 1969 s 2(3)(a) (as amended: see note 14 supra).

16 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

17 Ie from such day as may be specified in the direction.

18 Mines and Quarries (Tips) Act 1969 s 2(3)(b) (amended by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(2)(b), Sch 2 para 20(a)).

19 Ie apart from under the Mines and Quarries (Tips) Act 1969 s 2(4) (as amended).

20 'Tipping operations' means the depositing of refuse from a mine and the carrying out of any operations necessary for, or incidental, to the depositing of the refuse: ibid s 10(1)(b) (amended by the Quarries Regulations 1999, SI 1999/2024, Sch 4 Pt I).

21 Ie as from such day as may be specified in the direction.

22 Mines and Quarries (Tips) Act 1969 s 2(4) (amended by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, Sch 2 para 20(a); and the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1975, SI 1975/1102, reg 2(2)). Where a direction is given under these provisions, or under the provisions mentioned in the text and notes 15, 18 supra, in relation to a tip which, apart from the direction, would be an active tip, then for the purposes of the Mines and Quarries Acts 1954 and 1969 the premises on which the tip, or the part specified in the direction, is situated cease to form part of the mine as from the day specified in the direction; but where the direction relates to part only of the tip, the remainder continues to be treated as an active tip and accordingly the premises on which the remainder is situated continue to form part of the mine with which the tip is associated: Mines and Quarries (Tips) Act 1969 s 2(5) (amended by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, Sch 2 para 20(b); and the Quarries Regulations 1999, SI 1999/2024, Sch 4 Pt II).

23 See the Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, regs 8-23 (as amended), reg 26; and PARA 545 et seq post.

24 'Classified tip' means a tip to which the Mines and Quarries (Tips) Act 1969 Pt I (as amended) applies, being of any of the following classes: (1) the tip consists of refuse accumulated or deposited wholly or mainly in a solid state and not in solution or suspension and (a) the superficial area covered by the refuse exceeds 10,000 square metres; or (b) the height of the tip exceeds 15 metres; or (c) the average gradient of the land covered by the refuse exceeds 1:12; (2) the tip consists of refuse accumulated or deposited wholly or mainly in solution or suspension and (a) any part of the tip, other than any retaining or confining wall or structure but including any liquid in it, is more than 4 metres above the level of any part of the neighbouring land within 50 metres of the perimeter of the tip; or (b) the volume of the tip, other than any retaining or confining wall or structure but including any liquid in it, exceeds 10,000 cubic metres: Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, reg 2(1). For the purposes of determining whether refuse has been accumulated or deposited wholly or mainly in a solid state or wholly or mainly in solution or suspension, any retaining or confining wall or structure is to be excluded: see reg 2(1). 'Active classified tip' and 'closed classified tip' are to be construed accordingly: see reg 2(1).

UPDATE

540-550 Security of Tips Associated with Mines

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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542. Mine with which a tip is associated.

For the purposes of the security provisions of the Mines and Quarries (Tips) Act 1969¹ the mine² with which a tip³ is associated is determined as follows:

- 216 (1) in the case of a tip on premises which are deemed to form part of a mine for the purposes of the Mines and Quarries Act 1954⁴, the tip is associated with the mine⁵;
- 217 (2) in the case of a tip not falling within head (1) above but on premises which, at any time after 1 January 1957⁶, were so deemed to form part of a mine, the tip is associated with that mine or, as the case may be, the last such mine⁷; and
- 218 (3) in any other case, the tip is associated with the mine from which refuse was deposited on it or, if it was used for the deposit of refuse from two or more mines, such one of them as the Health and Safety Executive⁸ may direct⁹.

1 le the Mines and Quarries (Tips) Act 1969 Pt I (ss 1-10) (as amended).

2 For the meaning of 'mine' see PARA 5 note 14 ante (definition applied by *ibid* s 1(3)(a)).

3 For the meaning of 'tip' see PARA 541 ante.

4 See the Mines and Quarries Act 1954 s 180(4) (as amended); and PARAS 5 note 13, 6 note 7 ante.

5 Mines and Quarries (Tips) Act 1969 s 10(2)(a) (s 10(2)(a), (b) amended by the Quarries Regulations 1999, SI 1999/2024, reg 47(4), Sch 4 Pt I).

6 le the commencement of the Mines and Quarries Act 1954: see s 194.

7 Mines and Quarries (Tips) Act 1969 s 10(2)(b) (as amended: see note 5 *supra*).

8 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

9 Mines and Quarries (Tips) Act 1969 s 10(2)(c) (amended by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(2)(b), Sch 2 para 21; and the Quarries Regulations 1999, SI 1999/2024, Sch 4 Pt I).

UPDATE

540-550 Security of Tips Associated with Mines

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/A. SECURITY OF TIPS ASSOCIATED WITH MINES/543. Information as to tips.

543. Information as to tips.

It is the duty of every mine¹ owner² and manager to take such steps as may be necessary for securing that he is at all material times in possession of all information relevant for determining the nature and extent of any steps which it is requisite for him to take to discharge efficiently the duties³ imposed on him by or by virtue of the security provisions⁴ of the Mines and Quarries (Tips) Act 1969⁵.

For the purpose of determining whether a tip⁶ to which those provisions apply⁷ is, or is likely to become, insecure⁸, an authorised inspector⁹ has power to require the owner of the mine with which it is associated¹⁰ to furnish such information as the inspector may specify, and may by notice served¹¹ on the owner require him to carry out such procedures or conduct such tests as may be specified in the notice¹². In relation to an active tip¹³, the inspector may impose these requirements on the mine manager instead of, or as well as, the owner¹⁴.

1 For the meaning of 'mine' see PARA 5 note 14 ante (definition applied by the Mines and Quarries (Tips) Act 1969 s 1(3)(a)).

2 For the meaning of 'owner' see PARA 512 ante (definition applied by ibid s 1(3)(a)).

3 As to such duties see eg the Mines and Quarries (Tips) Act 1969 s 4 (as amended) (notification of beginning and ending of tipping operations: see PARA 544 post); s 5 (as amended) (making of tipping rules: see PARA 546 post); ss 6, 7 (both as amended) (duties as to plans etc: see PARAS 547-548 post); and the Mines and Quarries (Tips) Regulations 1971, SI 1971/1377 (as amended) (see PARA 545 et seq post).

4 In the Mines and Quarries (Tips) Act 1969 Pt I (ss 1-10) (as amended).

5 Ibid s 3(1) (s 3(1), (4), (5) amended by the Quarries Regulations 1999, SI 1999/2024, reg 47(5), Sch 4 Pt II). As to the general duties of owners and managers of mines see PARA 533 et seq ante; and HEALTH AND SAFETY AT WORK.

6 For the meaning of 'tip' see PARA 541 ante.

7 See PARA 541 ante.

8 'Insecure' is not defined, but see PARA 540 note 8 ante.

9 For the meaning of 'inspector' see PARA 511 note 4 ante (definition applied by the Mines and Quarries (Tips) Act 1969 s 1(3)(a)). As to inspectors see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375 et seq.

10 As to the mine with which a tip is associated see PARA 542 ante.

11 'Notice' means notice in writing: Mines and Quarries Act 1954 s 182(1), Mines and Quarries (Tips) Act 1969 s 1(3)(a). As to the service of notices see PARA 527 ante.

12 Ibid s 3(4) (as amended: see note 5 supra). The owner or manager, as the case may be, may require a reference upon such a notice: see s 3(6); the Mines and Quarries Act 1954 s 170 (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 774.

13 For the meaning of 'active tip' see PARA 541 ante.

14 Mines and Quarries (Tips) Act 1969 s 3(5) (as amended: see note 5 supra).

UPDATE

540-550 Security of Tips Associated with Mines

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/A. SECURITY OF TIPS ASSOCIATED WITH MINES/544. Notification of beginning and ending of tipping operations.

544. Notification of beginning and ending of tipping operations.

Where tipping operations¹ from any mine² of a prescribed class or description³ are to be begun on premises which at that time are not the site of a tip⁴ to which the security provisions of the Mines and Quarries (Tips) Act 1969 apply⁵, or are to be resumed at a tip which at that time is a closed tip⁶, the owner⁷ must give notice to the district inspector⁸ of the intention to begin or resume the tipping operations⁹. Where tipping operations from a mine cease at an active tip¹⁰, the owner must give notice of that fact not more than two months after the date on which the operations cease to the district inspector¹¹.

1 For the meaning of 'tipping operations' see PARA 541 note 20 ante.

2 For the meaning of 'mine' see PARA 5 note 14 ante (definition applied by the Mines and Quarries (Tips) Act 1969 s 1(3)(a)).

3 Every class and description of mine is prescribed for the purposes of ibid s 4 (as amended): Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, reg 7 (amended by SI 1999/2024).

4 For the meaning of 'tip' see PARA 541 ante.

5 Ie the Mines and Quarries (Tips) Act 1969 Pt I (ss 1-10) (as amended).

6 For the meaning of 'closed tip' see PARA 541 ante. As to disused tips see PARA 561 et seq post.

7 For the meaning of 'owner' see PARA 512 ante (definition applied by the Mines and Quarries (Tips) Act 1969 s 1(3)(a)).

8 For the meaning of 'inspector' see PARA 511 note 4 ante (definition applied by ibid s 1(3)(a)). As to inspectors see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375 et seq.

9 Ibid s 4(1) (s 4 amended by the Quarries Regulations 1999, SI 1999/2024, reg 47(5), Sch 4 Pt II). The notice must be given not less than 30 days, or such shorter period as the inspector may permit, before the beginning or resumption of the operations: Mines and Quarries (Tips) Act 1969 s 4(1) (as so amended). Where tipping operations from a mine are to be begun on premises which at that time are not the site of a tip to which Pt I (as amended) applies, the owner must also, and within a similar period, give notice to the district inspector of whether or not the resulting tip is intended to be a classified tip, and if the notice states that the resulting tip is intended to be a classified tip, it is thereupon treated as such: Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, reg 8(1), (4) (reg 8(1), (2), (4) amended by SI 1999/2024). Where the owner has given such notice that the resulting tip is not to be a classified tip, the inspector may at any time before tipping operations are begun for the purpose of ensuring the safety of the tip or for securing that the site is satisfactory by notice served on the owner direct that the tip is to be treated as a classified tip: Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, reg 8(2) (as so amended). The owner may require a reference upon such a notice: reg 8(3). For the meaning of 'classified tip' see PARA 541 note 24 ante.

10 For the meaning of 'active tip' see PARA 541 ante.

11 Mines and Quarries (Tips) Act 1969 s 4(2) (as amended: see note 9 supra).

UPDATE

540-550 Security of Tips Associated with Mines

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/A. SECURITY OF TIPS ASSOCIATED WITH MINES/545. General management of tips.

545. General management of tips.

Subject to a power of exemption¹, comprehensive provisions govern the drainage², supervision³ and inspection⁴ of tips to which the security provisions of the Mines and Quarries (Tips) Act 1969⁵ apply and the appointment of competent persons for these purposes⁶. There are special provisions relating to classified tips⁷, according to whether they are active⁸ or closed⁹, and provision is also made as to the conduct of employees at tips to which those provisions apply¹⁰.

1 le subject to the power of an authorised inspector to exempt:

190 (1) in the case of an active tip, the mine with which it is associated or any part of it, including the tip; or

191 (2) in the case of a closed tip, the tip or any part of it,

from any provision of the regulations where he considers that its application is inappropriate or that the exemption will not prejudice the security of the tip: Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, reg 3 (amended by SI 1999/2024). For the meaning of 'tip' see PARA 541 ante. For the meanings of 'active tip' and 'closed tip' see PARA 541 ante; and for the meaning of 'mine' see PARA 5 ante.

2 Tipping operations from every mine must be carried out in such a way as to secure that the operations and the tip resulting from them do not cause an accumulation of water in under or near the tip which may make the tip insecure: Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, reg 4(1) (amended by SI 1999/2024). Every active and closed tip must be kept efficiently drained: Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, reg 4(2). For the meaning of 'tipping operations' see PARA 541 note 20 ante.

3 See *ibid* regs 5, 6 (as amended).

4 See *ibid* regs 5(3), 6, 11, 17 (regs 6, 11 and 17 amended by SI 1999/2024).

5 le the Mines and Quarries (Tips) Act 1969 Pt I (ss 1-10) (amended by SI 1999/2024). As to tips to which the provisions apply see PARA 541 ante.

6 See the Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, regs 5(1), 11, 12, 14, 17, 18 (regs 11, 12, 14, 17, 18 amended by SI 1999/2024).

7 For the meaning of 'classified tip' see PARA 541 note 24 ante.

8 As to the provisions relating to active classified tips see the Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, Pt III (regs 9-16) (amended by SI 1999/2024).

9 As to the provisions relating to closed classified tips see the Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, Pt IV (regs 17-20) (amended by SI 1999/2024). As to the resumption of tipping operations at closed tips see the Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, Pt V (regs 21-23) (amended by SI 1999/2024).

10 See the Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, reg 27.

UPDATE

540-550 Security of Tips Associated with Mines

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/A. SECURITY OF TIPS ASSOCIATED WITH MINES/546. Tipping rules.

546. Tipping rules.

Regulations¹ may require that, in the case of any mine with which is associated² an active tip³ of such class or description as may be prescribed, the manager of the mine must make rules, referred to as 'tipping rules'⁴, with respect to tipping operations⁵ on any active tip of a prescribed class or description and the nature of the refuse to be deposited on such a tip⁶.

Tipping rules must comply with any requirements as to form and content prescribed by regulations⁷, and such duties and prohibitions may be imposed on the persons employed at the mine as the manager of the mine considers necessary for securing compliance with the statutory requirements⁸, but a tipping rule which is inconsistent with any regulation is, to that extent, of no effect⁹.

If an authorised inspector¹⁰ is of the opinion that the tipping rules of a mine require modification he may serve on the manager of the mine a notice¹¹ to that effect, specifying a time within which the rules are to be modified¹².

A copy of the tipping rules in force must be kept at the office at the mine or at such other place as may be approved¹³ by an authorised inspector, and the manager of the mine must supply to every person employed whose duties include the carrying out of tipping operations a document explaining the effect of the tipping rules so far as they concern him¹⁴.

A document purporting to be certified by the manager of the mine to be a true copy of the tipping rules in force is admissible in evidence and, unless the contrary is proved, is deemed to be such a copy¹⁵.

1 See the Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, reg 10 (as amended), reg 23; and the text to note 6 infra.

2 As to the mine with which a tip is associated see PARA 542 ante. For the meaning of 'mine' see PARA 5 note 14 ante (definition applied by the Mines and Quarries (Tips) Act 1969 s 1(3)(a)).

3 For the meaning of 'active tip' see PARA 541 ante.

4 Mines and Quarries (Tips) Act 1969 ss 5(1), 10(1)(c) (s 5(1)-(3), (6), (7) amended by the Quarries Regulations 1999, SI 1999/2024, reg 47(5), Sch 4 Pt II).

5 For the meaning of 'tipping operations' see PARA 541 note 20 ante.

6 Mines and Quarries (Tips) Act 1969 s 5(1) (as amended: see note 4 supra). See the Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, reg 10 (as amended by SI 1999/2024), which requires tipping rules to be made in the case of every mine or quarry with which is associated an active classified tip. For the meaning of 'classified tip' see PARA 541 note 24 ante. Such rules must in particular specify: (1) the manner in which tipping operations on that tip are to be carried out (Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, reg 10(1)(a)); (2) the nature and extent of supervision of tipping operations, the precautions to be taken to avoid a dangerous occurrence and to keep the tip secure, and which of the persons employed has been appointed to carry out the supervision and to take the precautions (reg 10(1)(b) (as so amended)); (3) the nature and frequency of the inspections of the tip and of the premises on which it is situated and of the drainage of the tip which the person making the rules considers necessary during the tipping operations to ensure the security of the tip, additional to the inspections required by other provisions of the regulations, and which of the persons employed is to carry out those inspections (reg 10(1)(c) (as so amended)); and (4) the action to be taken on any defect revealed by those inspections (reg 10(1)(d)). See also PARA 545 ante. Where tipping operations are begun on a site to which the Mines and Quarries (Tips) Act 1969 Pt I (ss 1-10) (as amended) does not apply (see PARA 541 ante), the tipping rules must be made upon the beginning of the operations: Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, reg 10(2). Where such operations are resumed at a closed classified tip,

tipping rules must be made upon the resumption of the operations: reg 23. In relation to a tip, 'dangerous occurrence' means any occurrence in which any movement of material, fire or other event indicates that the tip is, or is likely to become, insecure: reg 2(1).

7 See note 6 supra.

8 Mines and Quarries (Tips) Act 1969 s 5(2) (as amended: see note 4 supra). For this purpose, the statutory requirements include any requirement imposed by or by virtue of Pt I (as amended): s 5(2) (as so amended).

9 Ibid s 5(5).

10 For the meaning of 'inspector' see PARA 511 note 4 ante (definition applied by ibid s 1(3)(a)). As to inspectors see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375 et seq.

11 For the meaning of 'notice' see PARA 543 note 11 ante. As to service see PARA 527 ante.

12 Mines and Quarries (Tips) Act 1969 s 5(3) (as amended: see note 4 supra). The recipient may require a reference upon such a notice: see s 5(4); the Mines and Quarries Act 1954 s 170 (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 774.

13 An approval may be varied or revoked: see PARA 518 ante.

14 Mines and Quarries (Tips) Act 1969 s 5(6) (as amended: see note 4 supra).

15 Ibid s 5(7) (as amended: see note 4 supra).

UPDATE

540-550 Security of Tips Associated with Mines

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/A. SECURITY OF TIPS ASSOCIATED WITH MINES/547. Plans and sections of tips.

547. Plans and sections of tips.

Provision may be made by regulations¹ requiring that the person having responsibility for every active or closed tip² of a prescribed class or description must keep at the office at the mine with which the tip is associated³, or other place approved by an authorised inspector⁴, accurate plans and sections of the tip and the underlying strata; and regulations⁵ may require such plans and sections to disclose the extent of the tip both up to a day not earlier than such previous day as may be prescribed and up to a distance⁶ from its position at that time not greater than such as may be prescribed⁷. The plans and sections so required must be of durable material and their form and scale, and the information to appear on them, may be specified in rules⁸ made by the Secretary of State⁹. Where regulations or rules require particular information to be recorded on a plan or section and an authorised inspector is of the opinion that the information cannot be recorded on it fully and clearly, he may serve a notice¹⁰ on the person having responsibility for the tip¹¹ requiring him to keep¹² such supplementary plan, section or drawing as appears requisite for recording that information¹³.

1 See the Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, reg 9 (amended by SI 1999/2024) (procedure before beginning of tipping operations at active classified tips); reg 13 (amended by SI 1999/2024) (plans, sections and maps in connection with active classified tips); regs 19, 20 (both amended by SI 1999/2024) (plans, sections and maps in connection with closed classified tips); reg 21 (amended by SI 1999/2024) (procedure before resumption of tipping operations at closed tips); and regs 24, 25 (both amended by SI 1999/2024) (transmission of plans etc relating to tips ceasing to be associated with a mine or quarry). For the meaning of 'tipping operations' see PARA 541 note 20 ante. For the meaning of 'classified tip' see PARA 541 note 24 ante.

2 For the meanings of 'active tip' and 'closed tip' see PARA 541 ante.

3 As to the mine with which a tip is associated see PARA 542 ante. For the meaning of 'mine' see PARA 5 note 14 ante (definition applied by the Mines and Quarries (Tips) Act 1969 s 1(3)(a)).

4 For the meaning of 'inspector' see PARA 511 note 4 ante (definition applied by *ibid* s 1(3)(a)). As to inspectors see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375 et seq.

5 See the Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, reg 13 (as amended). The following are required to be kept: (1) plans and sections of active classified tips to show the extent of the tip up to a date not more than 15 months past or such other date as an inspector may require; (2) plans to show the premises on which the tip is situated and neighbouring land within 250 metres of the boundaries of those premises; and (3) sections to show any variation in the thickness or character of strata which may affect the security of the tip: reg 13(c). As to the requirement to keep reports, directions and maps see reg 13(a), (b), (d).

6 Unless the contrary intention appears, distance is to be measured in a straight line in a horizontal plane: Interpretation Act 1978 ss 8, 22(1), Sch 2 para 3.

7 Mines and Quarries (Tips) Act 1969 s 6(1) (s 6(1), (3) amended by the Quarries Regulations 1999, SI 1999/2024, reg 47(5), Sch 4 Pt II).

8 The form and scale of, and information to appear on, plans and sections of active or closed tips, and sections, of underlying strata, required by the Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, regs 13, 20 (both as amended) (see note 1 *supra*) are specified by the Mines and Quarries (Tipping Plans) Rules 1971, SI 1971/1378.

9 Mines and Quarries (Tips) Act 1969 s 6(2). The plans and sections must be on a scale not less than such as may be so specified and any such plans and sections must record such information as may be so specified with respect to situation, contours, boundaries, the nature of the refuse deposited and any other matters (whether similar to these or not) as may be so specified: s 6(2). As to the Secretary of State see PARA 4 ante.

10 For the meaning of 'notice' see PARA 543 note 11 ante. As to the posting up and service of notices see PARAS 525, 527 ante.

11 For these purposes, the person having responsibility for a tip is: (1) in the case of an active tip associated with a mine, the manager (Mines and Quarries (Tips) Act 1969 s 6(4)(b)); and (2) in the case of a closed tip associated with a mine, the owner (s 6(4)(c)).

12 le at the office at the mine with which the tip is associated or at such other place as may be approved by an inspector: see *ibid* s 6(3) (as amended: see note 7 *supra*).

13 *Ibid* s 6(3) (as amended: see note 7 *supra*).

UPDATE

540-550 Security of Tips Associated with Mines

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/A. SECURITY OF TIPS ASSOCIATED WITH MINES/548. Transmission of plans etc to the inspector.

548. Transmission of plans etc to the inspector.

Regulations¹ may require that, on the abandonment of a mine², the owner³ must, within the prescribed period⁴, send to the district inspector⁵ accurate plans, drawings and sections⁶ relating to tips⁷ associated with the mine⁸, and other prescribed information with respect to the nature and quantity of the refuse deposited on, and any other prescribed matters relating to, any tip associated with the mine⁹.

1 As to the regulations made see note 9 infra.

2 For the meaning of 'mine' see PARA 5 note 14 ante (definition applied by the Mines and Quarries (Tips) Act 1969 s 1(3)(a)).

3 For the meaning of 'owner' see PARA 512 ante (definition applied by ibid s 1(3)(a)).

4 As to the period prescribed see note 9 infra.

5 For the meaning of 'inspector' see PARA 511 note 4 ante (definition applied by the Mines and Quarries (Tips) Act 1969 s 1(3)(a)). As to inspectors see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375 et seq.

6 Ie such plans, drawings and sections as were required to be kept by virtue of ibid s 6 (as amended): see PARA 547 ante.

7 For the meaning of 'tip' see PARA 541 ante.

8 Mines and Quarries (Tips) Act 1969 s 7(1)(a) (s 7(1) amended by the Quarries Regulations 1999, SI 1999/2024, reg 47(5), Sch 4 Pt II). As to the mine with which a tip is associated see PARA 542 ante.

9 Mines and Quarries (Tips) Act 1969 s 7(1)(b) (as amended: see note 8 supra). The Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, reg 24 (as amended) requires that within three months of the abandonment of a mine the owner must send to the district inspector: (1) all such plans, drawings and sections relating to tips associated with the mine as were required to be kept by virtue of the Mines and Quarries (Tips) Act 1969 s 6 (as amended) (see PARA 547 ante) (Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, reg 24(a) (regs 24, 25 amended by the SI 1999/2024)); (2) all such other plans relating to such tips as were required to be kept by the Mines and Quarries (Tips) Regulations 1971, SI 1971/1377 (reg 24(b) (as so amended)); (3) all such reports or records relating to such tips as were required to be kept by virtue of regs 13, 14(b), 20 (all as amended) (see PARAS 545, 547 ante) (reg 24(c) (as so amended)). Similarly, before an owner of a mine with which a tip is associated parts with exclusive occupation of the whole of the premises on which the tip is situated, he must send the district inspector all such plans, drawings, sections, reports and records (or accurate copies of them) relating to the tip as mentioned in reg 24: reg 25 (as so amended).

UPDATE

540-550 Security of Tips Associated with Mines

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/A. SECURITY OF TIPS ASSOCIATED WITH MINES/549. Preservation of plans etc.

549. Preservation of plans etc.

Plans, drawings, sections and other information sent to an inspector¹ must be preserved by the Health and Safety Executive² or some person under arrangements made or approved by the Health and Safety Executive³. However, when the working of a mine⁴ is resumed, the owner⁵ is entitled to have the plans, drawings, sections and other information delivered to him on giving the required notice⁶. If required to do so before the expiry of the notice⁷, the owner of a mine must afford the Health and Safety Executive a reasonable opportunity of making copies of them⁸.

1 Plans sent to an inspector in accordance with the Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, regs 24, 25 (both as amended) (see PARA 548 ante): see the Mines and Quarries (Tips) Act 1969 s 7(1), (2) (amended by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(1)(b), Sch 2 para 21). For the meaning of 'inspector' see PARA 511 note 4 ante (definition applied by s 1(3)(a)). As to inspectors see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375 et seq.

2 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

3 Mines and Quarries (Tips) Act 1969 s 7(2) (as amended: see note 1 supra).

4 For the meaning of 'mine' see PARA 5 note 14 ante (definition applied by ibid s 1(3)(a)).

5 For the meaning of 'owner' see PARA 512 ante (definition applied by ibid s 1(3)(a)).

6 Ibid s 7(3) (s 7(3), (4) amended by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, Sch 2 para 21; and the Quarries Regulations 1999, SI 1999/2024, reg 47(5), Sch 4 Pt II). The required notice is not less than 14 days' notice given to the person by whom the plans etc are preserved and, where that person is not the Health and Safety Executive, to the Health and Safety Executive: Mines and Quarries (Tips) Act 1969 s 7(3) (as so amended). For the meaning of 'notice' see PARA 543 note 11 ante.

7 Plans the notice given under ibid s 7(3) (as amended): see the text and note 7 supra.

8 Ibid s 7(4) (as amended: see note 7 supra).

UPDATE

540-550 Security of Tips Associated with Mines

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/A. SECURITY OF TIPS ASSOCIATED WITH MINES/550. Contraventions in relation to closed tips.

550. Contraventions in relation to closed tips.

In relation to a closed tip¹ which is associated with a mine², the manager³ of the mine as such is not guilty of an offence⁴ by reason of a contravention⁵ of: (1) any statutory provision⁶; (2) a direction, prohibition, restriction or requirement in an inspector's notice⁷; (3) a condition attached to an exemption, consent, approval or authority granted or given⁸ by the Health and Safety Executive⁹ or an inspector¹⁰; or (4) a requirement or prohibition imposed by or under health and safety regulations¹¹.

1 For the meaning of 'closed tip' see PARA 541 ante.

2 As to the mine with which a tip is associated see PARA 542 ante.

3 For this purpose, 'manager' includes, in relation to a mine, an under-manager and any person who is treated for the purposes of the Mines and Quarries Act 1954 as the manager or an under-manager: Mines and Quarries (Tips) Act 1969 s 3(3) (amended by the Quarries Regulations 1999, SI 1999/2024, reg 47(5), Sch 4 Pt II). As to the management and control of mines see PARA 531 et seq ante; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 748 et seq. For the meaning of 'mine' see PARA 5 note 14 ante (definition applied by the Mines and Quarries (Tips) Act 1969 s 1(3)(a)).

4 Ie an offence by virtue of the Mines and Quarries Act 1954 s 152(1) (as amended) (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 877.

5 As to the meaning of 'contravention' see PARA 533 note 15 ante (definition applied by the Mines and Quarries (Tips) Act 1969 s 1(3)(a)).

6 Mines and Quarries (Tips) Act 1969 s 3(2)(a) (s 3 amended by the Quarries Regulations 1999, SI 1999/2024, Sch 4 Pt II). The provisions referred to are any provision of the Mines and Quarries Acts 1954 and 1969 (as to which see PARA 511 note 3 ante), or of orders under those Acts or of regulations (as to which see PARA 533 ante): see the Mines and Quarries (Tips) Act 1969 s 3(2)(a).

7 Ibid s 3(2)(b). Such a notice is served under or by virtue of the Mines and Quarries Acts 1954 and 1969: see the Mines and Quarries (Tips) Act 1969 s 3(2)(b). For the meaning of 'inspector' see PARA 511 note 4 (definition applied by s 1(3)(a)). As to inspectors see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375 et seq.

8 Ie granted or given under or by virtue of the Mines and Quarries Acts 1954 and 1969.

9 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

10 Mines and Quarries (Tips) Act 1969 s 3(2)(c) (amended by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(2)(b), Sch 2 para 21).

11 Mines and Quarries (Tips) Act 1969 s 3(2)(d) (added by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, Sch 2 para 22; and amended by the Quarries Regulations 1999, SI 1999/2024, Sch 4 Pt II). As to health and safety regulations generally see HEALTH AND SAFETY AT WORK. The health and safety regulations referred to are those which expressly apply to all mines, any class of mines to which the mine belongs or the particular mine: Mines and Quarries (Tips) Act 1969 s 3(2)(d) (as so added and amended).

UPDATE

540-550 Security of Tips Associated with Mines

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/B. SAFETY OF EXCAVATIONS AND TIPS AT QUARRIES/551. The legislation.

B. SAFETY OF EXCAVATIONS AND TIPS AT QUARRIES

551. The legislation.

Provisions¹ about the safety of excavations² and tips³ associated with quarries⁴ are contained in the Quarries Regulations 1999⁵.

1 See PARA 552 et seq post.

2 For the meaning of 'excavation' see PARA 6 note 8 ante.

3 For the meaning of 'tip' see PARA 6 note 13 ante.

4 For the meaning of 'quarry' see PARA 6 ante.

5 Ie the Quarries Regulations 1999, SI 1999/2024 (as amended), which are made under the Health and Safety at Work etc Act 1974 (see PARA 511 ante; and HEALTH AND SAFETY AT WORK).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/B. SAFETY OF EXCAVATIONS AND TIPS AT QUARRIES/552. General duty of operator.

552. General duty of operator.

The operator¹ of a quarry² must ensure that excavations³ and tips⁴ are designed, constructed, operated and maintained⁵ so as to ensure that instability or movement, which is likely to give rise to a risk to the health and safety of any person, is avoided⁶. In addition to this general duty the operator has a number of specific duties relating to excavations and tips⁷.

1 For the meaning of 'operator' see PARA 512 ante.

2 For the meaning of 'quarry' see PARA 6 ante.

3 For the meaning of 'excavation' see PARA 6 note 8 ante.

4 For the meaning of 'tip' see PARA 6 note 13 ante.

5 For the meaning of 'maintained' see PARA 535 note 4 ante.

6 Quarries Regulations 1999, SI 1999/2024, reg 30.

7 See PARA 553 et seq post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/B. SAFETY OF EXCAVATIONS AND TIPS AT QUARRIES/553. Duty to keep record of substances tipped.

553. Duty to keep record of substances tipped.

The operator¹ of a quarry² must ensure that sufficient records are kept of the nature, quantity and location of all substances accumulated or deposited at a notifiable tip³ to enable an accurate assessment of the stability of that tip to be made⁴.

1 For the meaning of 'operator' see PARA 512 ante.

2 For the meaning of 'quarry' see PARA 6 ante.

3 As to notifiable tips see the Quarries Regulations 1999, SI 1999/2024, reg 34; and PARA 559 post.

4 Ibid reg 36.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/B. SAFETY OF EXCAVATIONS AND TIPS AT QUARRIES/554. Notification requirements.

554. Notification requirements.

In relation to any:

- 219 (1) proposed excavation¹ or tip² which it is reasonable to expect will be a significant hazard³;
- 220 (2) notifiable excavation⁴; or
- 221 (3) notifiable tip⁵ other than a notifiable tip which was a classified tip⁶, and in respect of which the relevant notice has been given⁷,

the operator⁸ of a quarry⁹ must¹⁰ give not less than 30 days' notice¹¹ (or such shorter period as the Health and Safety Executive¹² may permit) to the Health and Safety Executive of his intention to commence or, in relation to excavations and tips falling within heads (2) and (3) above, continue, operations¹³.

The following information must be included in any notice given by the operator in accordance with the above requirements¹⁴:

- 222 (a) a brief description of the excavation or tip, including its location, size, and the material to be excavated or tipped¹⁵; and
- 223 (b) in relation to excavations and tips falling within heads (2) and (3) above, the conclusions reached by the geotechnical specialist¹⁶ carrying out the geotechnical assessment¹⁷.

Where the conclusion reached by a geotechnical specialist during the geotechnical assessment of an excavation or tip which has been subject to a geotechnical assessment at least every two years¹⁸ is that the excavation or tip no longer presents a significant hazard by way of instability or movement, the operator must give notice of that conclusion and the reasons for that conclusion to the Health and Safety Executive within two months of the geotechnical assessment¹⁹.

1 For the meaning of 'excavation' see PARA 6 note 8 ante.

2 For the meaning of 'tip' see PARA 6 note 13 ante.

3 Quarries Regulations 1999, SI 1999/2024, reg 37(1)(a). 'Hazard' in relation to an excavation or tip means having the potential to cause harm to the health and safety of any person: reg 2(1).

4 Ibid reg 37(1)(b). As to notifiable excavations see reg 34; and PARA 559 post.

5 As to notifiable tips see reg 34; and PARA 559 post.

6 ie within the meaning of the Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, reg 2(1) (see PARA 541 ante).

7 Quarries Regulations 1999, SI 1999/2024, reg 37(1)(c). The notice referred to in the text is that given under the Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, reg 8(1) (as amended) (see PARA 544 ante).

8 For the meaning of 'operator' see PARA 512 ante.

9 For the meaning of 'quarry' see PARA 6 ante.

10 Ie subject to the Quarries Regulations 1999, SI 1999/2024, reg 37(2), which provides that heads (2) and (3) in the text do not apply to an excavation or tip in relation to which notice of intention to commence operations has previously been given.

11 The 30 days' notice referred to must be given: in the case of excavations and tips falling within head (1) in the text, before the commencement of operations; and in the case of excavations and tips falling within heads (2) and (3) in the text, as soon as possible after the date on which the operator is notified of the geotechnical specialist's conclusions, reached in accordance with *ibid* reg 33(1)(b) (see PARA 558 post): reg 37(3).

12 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

13 Quarries Regulations 1999, SI 1999/2024, reg 37(1).

14 Ie in accordance with *ibid* reg 37(1).

15 *Ibid* reg 37(4)(a).

16 For the meaning of 'geotechnical specialist' see PARA 558 note 2 post.

17 Quarries Regulations 1999, SI 1999/2024, reg 37(4)(b). The conclusions referred to in the text are those reached in accordance with reg 33(1)(b),(c) and (d) (see PARA 558 post). As to geotechnical assessments see PARA 558 post.

18 Ie in accordance with *ibid* reg 34(1) (see PARA 559 post).

19 *Ibid* reg 37(5).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/B. SAFETY OF EXCAVATIONS AND TIPS AT QUARRIES/555. Excavations and tips rules.

555. Excavations and tips rules.

The operator¹ of a quarry² must ensure that suitable and sufficient rules (the 'excavations and tips rules') are made to ensure the safe construction and operation of excavations³ and tips⁴. Such rules must in particular specify the following matters:

- 224 (1) the manner in which such activities are to be carried out⁵;
- 225 (2) the nature and extent of supervision of such activities⁶; and
- 226 (3) the precautions to be taken during such activities to ensure the health and safety of any person and the safety and stability of the excavation or tip⁷.

1 For the meaning of 'operator' see PARA 512 ante.

2 For the meaning of 'quarry' see PARA 6 ante.

3 For the meaning of 'excavation' see PARA 6 note 8 ante.

4 Quarries Regulations 1999, SI 1999/2024, regs 2(1), 31. For the meaning of 'tip' see PARA 6 note 13 ante.

5 Ibid reg 31(a).

6 Ibid reg 31(b).

7 Ibid reg 31(c).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/B. SAFETY OF EXCAVATIONS AND TIPS AT QUARRIES/556. Appraisal of excavations and tips.

556. Appraisal of excavations and tips.

The operator¹ must ensure that a suitable and sufficient appraisal of all proposed or existing excavations² or tips³ at the quarry⁴ is undertaken by a competent⁵ person in order to determine whether any such excavation or tip is a significant hazard⁶.

The operator must ensure that:

- 227 (1) any significant findings made during an appraisal, any conclusions reached⁷, and the reasons for those conclusions, are recorded by the competent person undertaking the appraisal⁸;
- 228 (2) the competent person signs and dates any such record⁹; and
- 229 (3) the record made in accordance with head (1) above is made available to each employer of persons at work at the quarry and to all persons at work at the quarry¹⁰.

Where the conclusion reached by the competent person following an appraisal¹¹ is that the excavation or tip presents no significant hazard, the operator must ensure that a competent person carries out further such appraisals:

- 230 (a) at appropriate intervals¹²;
- 231 (b) whenever there is any reason to suspect that there has been or will be a significant change to the matters to which the appraisal relates, or any neighbouring land which may be affected by movement by or instability of the excavation or tip to which the appraisal relates¹³; and
- 232 (c) whenever there is any reason to doubt the validity of the conclusion of the current appraisal¹⁴.

Where the conclusion reached by the competent person following an appraisal¹⁵ is that the excavation or tip represents a significant hazard, the operator must ensure that a geotechnical assessment is carried out¹⁶ as soon as is reasonably practicable¹⁷.

1 For the meaning of 'operator' see PARA 512 ante.

2 For the meaning of 'excavation' see PARA 6 note 8 ante.

3 For the meaning of 'tip' see PARA 6 note 13 ante.

4 For the meaning of 'quarry' see PARA 6 ante.

5 For the meaning of 'competent' see PARA 535 note 13 ante.

6 Quarries Regulations 1999, SI 1999/2024, reg 32(1). For the meaning of 'hazard' see PARA 554 note 3 ante. As to the operator's duties in relation to excavations and tips which are and are not significant hazards see regs 34, 35; and PARAS 559 and 560 post.

7 Ie any conclusions reached in accordance with ibid reg 32(1).

8 Ibid reg 32(2)(a).

9 Ibid reg 32(2)(b).

10 Ibid reg 32(2)(c).

11 Ie an appraisal made pursuant to ibid reg 32(1).

12 Ibid reg 32(3)(a).

13 Ibid reg 32(3)(b).

14 Ibid reg 32(3)(c).

15 Ie an appraisal pursuant to ibid reg 32(1).

16 Ie a geotechnical assessment in accordance with ibid reg 33 (see PARA 558 post).

17 Ibid reg 32(4). Where, at the coming into force of these regulations (1 January 2000: but see reg 1), a report has been obtained in accordance with the Mines and Quarries (Tips) Regulations 1971, SI 1971/1377, regs 9(2)(a), 12(1) or 18(1) (all as amended) (see PARAS 541, 545, 547 ante) and is less than two years old, that report is treated as a geotechnical assessment for the purpose of the Quarries Regulations 1999, SI 1999/2024, reg 32(4) and remains valid for a maximum of two years from the date when it was first made: reg 38.

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557. Operator's duties in relation to geotechnical assessments.

The operator¹ of a quarry² must ensure that:

- 233 (1) any significant findings made during a geotechnical assessment³ and any conclusions reached⁴, and the reasons for those conclusions, are recorded by the geotechnical specialist⁵ undertaking the assessment⁶; and
- 234 (2) such geotechnical specialist signs and dates any such record and records his professional qualifications on it⁷.

The operator must ensure that any information available to him which may be relevant for the purposes of a geotechnical assessment is made available to the geotechnical specialist undertaking that assessment⁸.

The operator must also ensure that any remedial works identified during the geotechnical assessment⁹ are completed by the date specified¹⁰.

1 For the meaning of 'operator' see PARA 512 ante.

2 For the meaning of 'quarry' see PARA 6 ante.

3 As to geotechnical assessments see PARA 558 post. As to the operator's duty to ensure that a geotechnical assessment is carried out see PARA 556 ante.

4 Ie reached in accordance with the Quarries Regulations 1999, SI 1999/2024, reg 33(1)(b), (c) or (d) (see PARA 558 post).

5 For the meaning of 'geotechnical specialist' see PARA 558 note 2 post.

6 Quarries Regulations 1999, SI 1999/2024, reg 33(2)(a).

7 Ibid reg 33(2)(b).

8 Ibid reg 33(3).

9 Ie under ibid reg 33(1)(c) (see PARA 558 head (3) post).

10 Ibid reg 33(4) (amended by SI 2002/2174).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/B. SAFETY OF EXCAVATIONS AND TIPS AT QUARRIES/558. Geotechnical assessments.

558. Geotechnical assessments.

For the purposes of the Quarries Regulations 1999¹, a 'geotechnical assessment' means an assessment carried out by a geotechnical specialist² identifying and assessing all factors liable to affect the stability and safety of a proposed or existing excavation³ or tip⁴ It includes:

- 235 (1) preparation by or under the supervision of the geotechnical specialist or, as appropriate, consideration by the geotechnical specialist, of the documents and particulars specified below⁵;
- 236 (2) the conclusion of the geotechnical specialist as to the safety and stability of the proposed or existing excavation or tip being assessed, including his conclusions as to whether such excavation or tip represents a significant hazard⁶ by way of instability or movement⁷;
- 237 (3) where appropriate, the conclusion of the geotechnical specialist as to whether any remedial work is required in relation to the excavation or tip being assessed and the date by which such work should be completed⁸;
- 238 (4) where appropriate, the conclusion of the geotechnical specialist as to the date by which the next geotechnical assessment should take place⁹; and
- 239 (5) consideration by the geotechnical specialist of the excavations and tips rules¹⁰.

The documents and particulars referred to in head (1) above are as follows:

- 240 (a) site survey¹¹;
- 241 (b) site investigation¹²;
- 242 (c) cross-sections based on site investigation¹³;
- 243 (d) plans based on site investigation¹⁴;
- 244 (e) assumptions made before analysis¹⁵;
- 245 (f) findings of analysis¹⁶;
- 246 (g) design coming out of analysis¹⁷; and
- 247 (h) requirements during and after construction¹⁸.

1 Ie the Quarries Regulations 1999, SI 1999/2024 (as amended).

2 'Geotechnical specialist' means a chartered engineer or chartered geologist who has: (1) three or more years' relevant experience in soil mechanics, rock mechanics or excavation engineering; and (2) is competent to perform a geotechnical analysis to determine the hazard and risk arising from the excavation or tip being assessed: *ibid* reg 2(1). For the meaning of 'competent' see PARA 535 note 13 ante.

3 For the meaning of 'excavation' see PARA 6 note 8 ante.

4 Quarries Regulations 1999, SI 1999/2024, reg 33(1). For the meaning of 'tip' see PARA 6 note 13 ante.

5 *Ibid* reg 33(1)(a). The documents and particulars are those specified in Sch 1: see heads (a)-(h) in the text and notes 11-18 *infra*.

6 For the meaning of 'hazard' see PARA 554 note 3 ante. As to the operator's duties in relation to excavations and tips which are and are not significant hazards see *ibid* regs 34-35; and PARAS 559, 560 post.

7 *Ibid* reg 33(1)(b).

8 Ibid reg 33(1)(c).

9 Ibid reg 33(1)(d).

10 Ibid reg 33(1)(e). As to the excavations and tips rules see PARA 555 ante.

11 Ibid reg 33(1)(a), Sch 1 para 1(a). The site survey is an accurate plan which should be prepared on a scale not less detailed than 1:2500 showing:

192 (1) the boundaries of the quarry or premises upon which the excavation or tip or proposed excavation or tip is or is to be situated (Sch 1 para 1(a));

193 (2) the site of the excavation or tip or proposed excavation or tip (Sch 1 para 1(b));

194 (3) any contiguous land or structures which might be affected by the excavation or tip or proposed excavation or tip (Sch 1 para 1(c)); and

195 (4) all mine workings (whether abandoned or not), buried quarry workings, known cave systems, active or former landslips, springs, artesian wells, watercourses and other natural or man-made features including tunnel pipes or culverts which might affect the safety of the excavation or tip or proposed excavation or tip or which might be relevant for the purpose of determining whether excavation or tipping operations can be carried out safely (Sch 1 para 1(d)),

which plan must be contoured to Ordnance Datum Newlyn at a vertical interval not greater than five metres and orientated to and correlated with the Ordnance Survey National Grid and marked with squares corresponding to the 100 metre squares shown on Ordnance Survey sheets on the scale of 1:2500 (Sch 1 para 1)).

12 Ibid Sch 1 para 2. The site investigation is a record of all relevant site investigation information including surveys, tests, boreholes and groundwater measurements made for the purpose of the geotechnical assessment together with the results of any testing including the strength of materials within and beneath the tip or within the excavated slope, and the record must include any known historical information relevant to the site investigation: Sch 1 para 2.

13 Ibid Sch 1 para 3. These are sufficient accurate cross-sections on a scale not less detailed than 1:1250 of the site of the excavation or tip or proposed excavation or tip showing the existing ground surface and all relevant superficial materials and bedrock underlying the site and:

196 (1) any variation in the thickness, level or character of the superficial deposits and bedrock materials based on the site investigation (Sch 1 para 3(a)); and

197 (2) the position of any surface whether natural or manmade which may affect the safety of the excavation or tip or proposed excavation or tip (Sch 1 para 3(a)).

14 Ibid Sch 1 para 4. These are plans showing the position of all boreholes, wells and trial pits used in the site investigation and the location and levels of all materials and surfaces which may affect the safety of the excavation or tip or proposed excavation or tip: Sch 1 para 4.

15 Ibid Sch 1 para 5. This is a record of any assumptions relevant to the assessment of ground conditions relating to the safety of the excavation or tip made by the geotechnical specialist including a record of any relevant information which was not available when undertaking the assessment: Sch 1 para 5.

16 Ibid Sch 1 para 6. This is a record of the calculations carried out in order to determine the safety of the excavation or tip, including any variables or parameters used in those calculations and the reasons for using them and the findings of those calculations expressed as the factor of safety or the probability of failure or other recognised basis of assessing stability: Sch 1 para 6.

17 Ibid Sch 1 para 7. This is an accurate plan on a scale not less detailed than 1:2500 recording:

198 (1) in relation to tips or proposed tips, the design of the tip, including the area of land covered or to be covered, the gradients of that land, the designed contours at vertical intervals of not more than two metres, the side slopes and boundaries of the tip and the designed position and nature of construction of any wall or other structure retaining or confining the tip (Sch 1 para 7(a)); and

199 (2) in relation to excavations or proposed excavations, the design of the excavation, including the height or proposed height of the slope, the position and width of any benches and representative contours of the excavation at vertical intervals of not more than five metres (Sch 1 para 7(a)).

18 Ibid Sch 1 para 8. This is a record of the nature and extent of inspection, supervision and safety measures necessary to ensure the safety of the excavation or tip and a specification of necessary engineering works and safety measures; and a record of the action to be taken regarding defects specified in the report: Sch 1 para 8.

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559. Operator's duties in relation to further geotechnical assessment of excavations and tips which are a significant hazard.

Where the conclusion recorded by a geotechnical specialist¹ as to the safety and stability of the proposed or existing excavation² or tip³ being assessed⁴ following a geotechnical assessment⁵ is that the excavation or tip represents a significant hazard⁶ by way of instability or movement, the operator⁷ of a quarry⁸ must ensure⁹ that the excavation or tip is subject to a further geotechnical assessment at least every two years¹⁰. Such excavations and tips are known as 'notifiable excavations' and 'notifiable tips' respectively¹¹.

Where, in relation to such an excavation or tip, there is any reason:

- 248 (1) to suspect that there has been or will be a significant change to the matters to which the geotechnical assessment relates, or any neighbouring land which may be affected by movement by or instability of the excavation or tip¹²; or
- 249 (2) to doubt the validity of the conclusion of the current assessment¹³,

the operator must ensure that a further geotechnical assessment is undertaken as soon as is reasonably practicable¹⁴.

1 For the meaning of 'geotechnical specialist' see PARA 558 note 2 ante.

2 For the meaning of 'excavation' see PARA 6 note 8 ante.

3 For the meaning of 'tip' see PARA 6 note 13 ante.

4 Ie under the Quarries Regulations 1999, SI 1999/2024, reg 33(1)(b) (see PARA 558 head (2) ante).

5 As to geotechnical assessments see PARA 558 ante.

6 For the meaning of 'hazard' see PARA 554 note 3 ante.

7 For the meaning of 'operator' see PARA 512 ante.

8 For the meaning of 'quarry' see PARA 6 ante.

9 Ie subject to the Quarries Regulations 1999, SI 1999/2024, reg 33(1)(d) (see PARA 558 head (4) ante).

10 Ibid reg 34(1). As to the operator's duties in relation to excavations and tips which are not a significant hazard see reg 35; and PARA 560 post.

11 Ibid regs 2(1), 34(3).

12 Ibid reg 34(2)(a).

13 Ibid reg 34(2)(b).

14 Ibid reg 34(2). This is without prejudice to reg 34(1) (see the text and note 10 supra).

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560. Operator's duties in relation to excavations and tips which are not a significant hazard.

Where the conclusion reached by a geotechnical specialist¹ as to the safety and stability of the proposed or existing excavation² or tip³ being assessed⁴ following a geotechnical assessment⁵ is that it presents no significant hazard⁶, the operator⁷ must ensure that:

- 250 (1) the geotechnical specialist specifies the frequency with which appraisals⁸ are to be conducted in order to ensure the continued safety and stability of the excavation or tip⁹; and
- 251 (2) a record of that specification is made¹⁰.

1 For the meaning of 'geotechnical specialist' see PARA 558 note 2 ante.

2 For the meaning of 'excavation' see PARA 6 note 8 ante.

3 For the meaning of 'tip' see PARA 6 note 13 ante.

4 Ie in accordance with the Quarries Regulations 1999, SI 1999/2024, reg 33(1)(b) (see PARA 558 head (2) ante).

5 As to geotechnical assessments see PARA 558 ante.

6 For the meaning of 'hazard' see PARA 554 note 3 ante.

7 For the meaning of 'operator' see PARA 512 ante.

8 Ie appraisals pursuant to the Quarries Regulations 1999, SI 1999/2024, reg 32 (see PARA 556 ante).

9 Ibid reg 35(a).

10 Ibid reg 35(b). As to the operator's duties in relation to excavations and tips which are a significant hazard see reg 34; and PARA 559 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/C. PREVENTION OF PUBLIC DANGER FROM DISUSED TIPS IN MINES AND QUARRIES/(A) Disused Tips/561. The legislation.

C. PREVENTION OF PUBLIC DANGER FROM DISUSED TIPS IN MINES AND QUARRIES

(A) DISUSED TIPS

561. The legislation.

For the purpose of ensuring that disused tips¹ do not, by reason of instability², constitute a danger to members of the public, local authorities³ have the functions conferred on them by the disused tip provisions⁴ of the Mines and Quarries (Tips) Act 1969⁵.

In the application of those provisions of the Mines and Quarries (Tips) Act 1969, specified provisions of the Public Health Act 1936⁶ apply as if the disused tip provisions were contained in that Act and as if any reference in that Act to a local authority were to a local authority within the meaning of the disused tip provisions⁷.

1 For the purposes of the Mines and Quarries (Tips) Act 1969 Pt II (ss 11-36) (as amended), 'disused tip' means a tip which is neither an active tip nor a closed tip within the meaning of Pt I (ss 1-10) (as amended): ss 11(2), 36(1). For the meanings of 'tip', 'active tip' and 'closed tip' see s 2(1), (2) (as amended); and PARA 541 ante. Part II (in contrast to Pt I (as amended)) applies to disused tips associated with both mines and quarries: see PARAS 540, 541 ante. Thus in the application of the definitions to Pt II (as amended) the words 'or quarry' after the word 'mine' which are omitted for the purposes of Pt I (as amended) remain for the purposes of Pt II (as amended).

2 For the purposes of *ibid* Pt II (as amended), a disused tip is to be treated as unstable if and only if there is, or there is reasonable ground for believing that there is likely to be, such a movement of the refuse which makes up the tip as to cause a significant increase in the area of land covered by the tip: s 36(2).

3 In *ibid* Pt II (as amended), 'local authority' in England means the council of a county, district or London borough, the Common Council of the City of London or the Council of the Isles of Scilly; and in Wales means the council of a county or county borough: ss 11(3), 36(1) (s 11(3) amended by the Local Government Act 1972 s 272(1), Sch 30; the Local Government Act 1985 s 16, Sch 8 para 27; and the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 34). As to areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.

4 *Ie* the Mines and Quarries (Tips) Act 1969 Pt II (as amended).

5 *Ibid* s 11(1). The Mines and Quarries (Tips) Act 1969 came into operation on 30 June 1969: see s 38(3); and the Mines and Quarries (Tips) Act 1969 (Commencement No 2) Order 1969, SI 1969/805. In the Mines and Quarries (Tips) Act 1969 Pt II (as amended), any reference to a section or subsection not otherwise identified is a reference to that section of that Act or to that subsection of the section in which the reference occurs; and any reference to any other enactment is to be taken as referring to that enactment as amended by or under any other enactment: s 36(5), (6). Part II (as amended) does not extend to Northern Ireland: s 38(5).

6 *Ie* the Public Health Act 1936 s 275 (as amended) (power of local authority to execute work on behalf of owners); s 304 (judges and justices not to be disqualified by liability to rates); s 305 (protection of members and officers of local authorities from personal liability); and s 341 (power to apply provisions of the Act to Crown property). See further ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 1 et seq.

7 Mines and Quarries (Tips) Act 1969 s 33 (amended by the Local Government (Miscellaneous Provisions) Act 1976 s 81(1), Sch 2).

UPDATE

561-583 Prevention of Public Danger from Disused Tips in Mines and Quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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562. Information as to disused tips.

For the purpose of enabling a local authority¹ to assess whether a disused tip² wholly or partly within its area is stable³ and whether any instability of the tip is or is likely to constitute a danger to members of the public, the local authority may, by notice served⁴ on the owner⁵ of the tip or on any other person who it has reason to believe may be able to assist it, require him, within a specified time⁶, to produce to the authority such document⁷ within his possession⁸ or control as may be specified⁹.

Any person who without reasonable excuse fails to comply with such a notice¹⁰ is liable on summary conviction to a fine not exceeding level 3 on the standard scale¹¹. Any person who, in pursuance of such a notice, with intent to deceive, produces any document or information which is false in a material particular, or knowingly or recklessly makes a statement which is similarly false, is liable on summary conviction to a fine not exceeding the prescribed sum, or on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both¹².

1 For the meaning of 'local authority' see PARA 561 note 3 ante.

2 For the meaning of 'disused tip' see PARA 561 note 1 ante.

3 As to stability see PARA 561 note 2 ante.

4 As to the service of documents see PARA 580 post.

5 'Owner', in relation to a disused tip, means the person who has a legal estate in the land on which the tip is situated which: (1) is either the fee simple or a tenancy for a specific term which has not less than one year unexpired and is not a mortgage term (Mines and Quarries (Tips) Act 1969 s 36(3)(a)(i)); and (2) is not in reversion expectant on the termination of such a tenancy (s 36(3)(a)(ii)). As to legal estates in land see REAL PROPERTY. As to mortgage generally see MORTGAGE vol 77 (2010) PARA 101 et seq.

6 I.e. such time, not being less than 14 days, as may be specified in the notice: see *ibid* s 12(1).

7 I.e. whether in the form of maps, surveys, plans, records of work or otherwise and whether relating to the tip itself or the land on which it is situated: see *ibid* s 12(1).

8 As to what constitutes possession of a document see CIVIL PROCEDURE vol 11 (2009) PARA 538; PERSONAL PROPERTY.

9 Mines and Quarries (Tips) Act 1969 s 12(1).

10 I.e. a notice under *ibid* s 12: see s 12(2) (as amended).

11 *Ibid* s 12(2) (amended by the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 98 note 12 ante.

12 Mines and Quarries (Tips) Act 1969 s 12(2) (amended by the Magistrates' Courts Act 1980 s 32(2)). As to forgery see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 346 et seq. As to the prescribed sum see PARA 106 note 15 ante.

UPDATE

561-583 Prevention of Public Danger from Disused Tips in Mines and Quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/C. PREVENTION OF PUBLIC DANGER FROM DISUSED TIPS IN MINES AND QUARRIES/(A) Disused Tips/563. Right of entry to carry out exploratory tests etc.

563. Right of entry to carry out exploratory tests etc.

Subject to certain provisions¹, a person duly authorised in writing² by a local authority³ may at any reasonable time enter upon the land on which a disused tip⁴ is situated, or upon any neighbouring land, for the purpose of: (1) investigating whether any instability⁵ of the tip might constitute a danger to members of the public⁶; (2) carrying out operations⁷, referred to as 'exploratory tests'⁸, to determine whether the tip is unstable⁹; and (3) inspecting any operations being carried out on that land where those operations may affect the stability of the tip¹⁰. However, a person so authorised must not demand admission as of right to any occupied land unless at least 48 hours' written notice has been given to the occupier¹¹.

If it is shown¹² to the satisfaction of a justice of the peace that admission has been refused to any land which any person is entitled to enter under these provisions, that a refusal is apprehended, or that the occupier is temporarily absent, and that there is reasonable ground for entry for the purpose for which entry is required, the justice may by warrant¹³ authorise entry, if need be by force¹⁴.

If a local authority has reasonable ground for believing that a disused tip is unstable and that possible danger to members of the public requires an immediate entry on to any such land as is referred to above¹⁵ for one or more of the purposes specified¹⁶, a person duly authorised in writing by the local authority may make such entry at any time and without giving notice or obtaining a warrant¹⁷.

Any person who wilfully obstructs¹⁸ a person exercising these powers is liable on summary conviction to a fine not exceeding level 3 on the standard scale¹⁹.

1 Ie the Mines and Quarries (Tips) Act 1969 s 13(2)-(6) (as amended): see s 13(1).

2 The person authorised must, if required, produce evidence of his authority and may take on to the land such other persons and such equipment as may be necessary: *ibid* s 13(5).

3 For the meaning of 'local authority' see PARA 561 note 3 ante.

4 For the meaning of 'disused tip' see PARA 561 note 1 ante.

5 As to instability see PARA 561 note 2 ante.

6 Mines and Quarries (Tips) Act 1969 s 13(1)(a).

7 'Operations' includes surveys and tests as well as tipping operations and building, engineering, mining and other operations: *ibid* s 36(1). For the meaning of 'tipping operations' see PARA 541 note 20 ante.

8 *Ibid* ss 13(1)(b), 36(1).

9 *Ibid* s 13(1)(b).

10 *Ibid* s 13(1)(c).

11 *Ibid* s 13(1).

12 Ie on sworn information in writing: see *ibid* s 13(2). As to informations see MAGISTRATES.

13 As to justices' warrants generally see MAGISTRATES.

14 Mines and Quarries (Tips) Act 1969 s 13(2). A warrant must not be issued on the ground of a refusal or apprehended refusal unless notice of the application for a warrant has been given to the occupier: s 13(2). The warrant continues in force until the purpose for which entry is required has been satisfied: s 13(3).

15 le the land on which the tip is situated, or any neighbouring land: see *ibid* s 13(1).

16 As to the purposes for which entry may be required see heads (1)-(3) in the text.

17 Mines and Quarries (Tips) Act 1969 s 13(4).

18 See PARA 412 notes 5-6 ante.

19 Mines and Quarries (Tips) Act 1969 s 13(6). As to the standard scale see PARA 98 note 12 ante.

UPDATE

561-583 Prevention of Public Danger from Disused Tips in Mines and Quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/C. PREVENTION OF PUBLIC DANGER FROM DISUSED TIPS IN MINES AND QUARRIES/ (B) Remedial Operations, Compensation and Contribution/564. Notice requiring remedial operations.

(B) REMEDIAL OPERATIONS, COMPENSATION AND CONTRIBUTION

564. Notice requiring remedial operations.

If it appears to a local authority¹ that a disused tip² situated wholly or partly within its area is unstable³ and for that reason constitutes or is likely to constitute a danger to members of the public, the authority may by notice in the prescribed form⁴ served⁵ on the owner⁶ require him to carry out, within a specified period⁷, such remedial operations⁸ as may be specified in the notice⁹. The notice may require such operations to be carried out on the tip itself, on the land on which it is situated or on any neighbouring land in the occupation of the owner of the tip or in which he has, otherwise than as a mortgagee, an estate or interest superior to that of the occupier¹⁰. The local authority must, within a specified period¹¹, serve copies of the notice on certain other persons¹².

An owner on whom such a notice is served by a local authority may, within a specified period¹³, serve a counter-notice in the prescribed form¹⁴ requiring the local authority to exercise its powers to carry out remedial operations itself¹⁵. The local authority's notice and the copies of it¹⁶ are thereupon deemed never to have been served¹⁷ and the local authority must, as soon as reasonably practicable, exercise its powers to carry out remedial operations itself¹⁸. The local authority must serve a copy of the counter-notice on every person on whom it served a copy of the notice¹⁹.

1 For the meaning of 'local authority' see PARA 561 note 3 ante.

2 For the meaning of 'disused tip' see PARA 561 note 1 ante.

3 As to instability see PARA 561 note 2 ante.

4 In a form prescribed by regulations made by the Secretary of State: Mines and Quarries (Tips) Act 1969 s 36(1). The Mines and Quarries (Tips) Act 1969 refers to the Minister of Housing and Local Government as the appropriate minister (see s 36(4)); as to the transfer of functions to the Secretary of State see PARA 4 ante.

No such notice may be served where the land on which the tip is situated is ecclesiastical property: see PARA 581 post.

5 As to the service of notices see PARA 580 post.

6 For the meaning of 'owner' see PARA 562 note 5 ante.

7 In such period as may be specified in the notice and beginning not earlier than 21 days after the date of service of the notice: Mines and Quarries (Tips) Act 1969 s 14(1).

8 In *ibid* Pt II (ss 11-36) (as amended), 'remedial operations', in relation to a disused tip, means operations which, in the opinion of the local authority concerned, are necessary to ensure the stability of the tip: ss 14(2), 36(1). For the meaning of 'operations' see PARA 563 note 7 ante.

9 *Ibid* s 14(1).

10 *Ibid* s 14(3).

11 In such period of seven days beginning with the day on which the notice was served: see *ibid* s 14(4).

- 12 See *ibid* s 14(4). The persons on whom copies of the notice to the owner must be served are:
- 200 (1) any other person who is in occupation of the whole or part of the land on which remedial operations are required to be carried out and any other person who, to the knowledge of the local authority, has an estate or interest, otherwise than as a mortgagee, in that land (s 14(4)(a));
 - 201 (2) any other person who, to its knowledge, either has an estate or interest, otherwise than as a mortgagee, in the land on which the tip is situated, or had such an estate or interest at any time within the period of 12 years immediately preceding the date of service of the notice on the owner (s 14(4)(b));
 - 202 (3) any other person who, to its knowledge, has an interest in, including a right to acquire, all or any of the material comprised in the tip (s 14(4)(c));
 - 203 (4) any other person who, to its knowledge, has at any time within the period referred to in head (2) *supra* used the tip for the purpose of the deposit of refuse from a mine or quarry (s 14(4)(d)); and
 - 204 (5) any other person who it has reason to believe has, at any time within that period, caused or contributed to the instability of the tip by the carrying out of any operations on the tip, on the land on which it is situated or on neighbouring land or by failing to take any steps which he might reasonably have taken to prevent the tip from becoming unstable (s 14(4)(e)).
- 13 Ie the period of 21 days beginning with the day on which the notice was served: see *ibid* s 14(5).
- 14 For the form of notice see the Disused Mine and Quarry Tips (Prescribed Forms) Regulations 1969, SI 1969/807, reg 3(b), Schedule, Form 2.
- 15 Mines and Quarries (Tips) Act 1969 s 14(5). For these powers see s 17; and PARA 568 *post*.
- 16 See the text and note 12 *supra*.
- 17 See the Mines and Quarries (Tips) Act 1969 s 14(5)(b).
- 18 See *ibid* s 14(5)(c).
- 19 See *ibid* s 14(5)(a). As to those persons see note 12 *supra*.

UPDATE

561-583 Prevention of Public Danger from Disused Tips in Mines and Quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/C. PREVENTION OF PUBLIC DANGER FROM DISUSED TIPS IN MINES AND QUARRIES/ (B) Remedial Operations, Compensation and Contribution/565. Effect of notice requiring remedial operations.

565. Effect of notice requiring remedial operations.

If, without reasonable excuse, the owner¹ of a disused tip² on whom is served a notice³ requiring remedial operations⁴ fails to carry out those operations within the period specified⁵ or any extension of that period⁶, he is liable on summary conviction to a fine not exceeding level 5 on the standard scale⁷.

Where any such notice requires the owner of a disused tip to carry out remedial operations on any land not in his occupation but in which he has an estate or interest superior to that of the occupier⁸, then, as against the occupier and any other person having an estate or interest in the land, the owner has the right to enter on to the land to carry out the remedial operations and any consequential works of reinstatement and to take with him such other persons and such equipment as may be necessary⁹.

Where, in the course of carrying out remedial operations specified in such a notice, material which is not the property of the owner is removed from the tip, the owner may sell the material but must account to its owner for the proceeds of sale; but this does not prevent the owner of a disused tip from setting off¹⁰ the proceeds of sale or any part of them against any sum which under the statutory provisions¹¹ he is entitled to recover from the owner of the material¹².

1 For the meaning of 'owner' see PARA 562 note 5 ante.

2 For the meaning of 'disused tip' see PARA 561 note 1 ante.

3 As to the notice see PARA 564 ante.

4 For the meaning of 'remedial operations' see PARA 564 note 8 ante.

5 See PARA 564 note 7 ante.

6 Ie under the Mines and Quarries (Tips) Act 1969 s 15(3) or s 15(4): see PARA 566 post.

7 Ibid s 14(8) (amended by the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 98 note 12 ante.

8 See PARA 562 note 5 ante.

9 Mines and Quarries (Tips) Act 1969 s 14(6).

10 As to rights of set-off generally see CIVIL PROCEDURE vol 11 (2009) PARA 634 et seq.

11 Ie provisions of the Mines and Quarries (Tips) Act 1969 Pt II (ss 11-36) (as amended) subsequent to s 14(7): see s 21; and PARA 573 post.

12 Ibid s 14(7). See further PARA 568 note 13 post.

UPDATE

561-583 Prevention of Public Danger from Disused Tips in Mines and Quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/C. PREVENTION OF PUBLIC DANGER FROM DISUSED TIPS IN MINES AND QUARRIES/ (B) Remedial Operations, Compensation and Contribution/566. Appeals against notices requiring remedial operations.

566. Appeals against notices requiring remedial operations.

A person on whom is served a notice¹ or copy of a notice² requiring remedial operations³ may apply⁴ to the court⁵, within a specified period⁶ and on specified grounds⁷, for an order varying or cancelling the notice⁸.

The specified grounds are: (1) that there is no reasonable ground for believing that the tip is unstable⁹ or that, by reason of instability it constitutes or is likely to constitute a danger to members of the public¹⁰; (2) that the remedial operations specified in the notice are more extensive than is necessary to secure the safety of members of the public¹¹; (3) that the stability of the tip could be secured by operations¹² different, in whole or in part, from the remedial operations specified and that the owner¹³ is prepared to undertake those alternative operations¹⁴; (4) that the owner or some other person has already begun, or has contracted for a third person to begin, operations different, in whole or in part, from the remedial operations specified and that those alternative operations will ensure the stability of the tip¹⁵; (5) that the time within which the remedial operations specified are to be carried out is not reasonably sufficient for the purpose¹⁶; (6) that there is some defect or error in, or in connection with the notice¹⁷.

If the court is satisfied that any such ground is made out, it may make an order varying or cancelling the notice¹⁸. Where the court varies the notice, the notice and any copy¹⁹ are deemed always to have had effect as so varied²⁰.

1 As to the notice see PARA 564 ante.

2 See PARA 564 note 12 ante.

3 For the meaning of 'remedial operations' see PARA 564 note 8 ante.

4 As to the cancellation of such a notice by the local authority, notwithstanding that an application has been made under this provision see PARA 567 post. For the meaning of 'local authority' see PARA 561 note 3 ante.

5 'The court' means the High Court or a county court: Mines and Quarries (Tips) Act 1969 s 28 (substituted by the High Court and County Court Jurisdiction Order 1991, SI 1991/724, art 2(8), Schedule Pt I).

6 I.e. the period of 21 days beginning with the date of service of the notice on the owner: see the Mines and Quarries (Tips) Act 1969 s 15(1).

7 See *ibid* s 15(1)(a)-(f); and the text to notes 9-17 *infra*.

8 See *ibid* s 15(1).

9 As to instability see PARA 561 note 2 ante.

10 Mines and Quarries (Tips) Act 1969 s 15(1)(a).

11 *Ibid* s 15(1)(b).

12 For the meaning of 'operations' see PARA 563 note 7 ante.

13 For the meaning of 'owner' see PARA 562 note 5 ante.

14 Mines and Quarries (Tips) Act 1969 s 15(1)(c).

15 Ibid s 15(1)(d).

16 Ibid s 15(1)(e).

17 Ibid s 15(1)(f). So far, however, as an application is on the ground mentioned in head (6) in the text, the court must dismiss the application if it is satisfied that the defect or error concerned was not material: s 15(2).

18 Ibid s 15(3). Where an application for variation or cancellation is made to the court and not withdrawn, the period specified in the notice for remedial operations to be carried out (see PARA 564 note 7 ante) does not expire until the application is finally determined; and where the court is not satisfied that the ground, or any of the grounds, of the application are made out, it may nevertheless by order extend the period specified in the notice for remedial operations to be carried out: s 15(4).

19 Ie a copy served under ibid s 14(4) (see PARA 564 note 12 ante): see s 15(3).

20 Ibid s 15(3).

UPDATE

561-583 Prevention of Public Danger from Disused Tips in Mines and Quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/C. PREVENTION OF PUBLIC DANGER FROM DISUSED TIPS IN MINES AND QUARRIES/ (B) Remedial Operations, Compensation and Contribution/567. Cancellation of notice requiring remedial operations.

567. Cancellation of notice requiring remedial operations.

Where a local authority¹ has served on the owner² of a disused tip³ a notice requiring remedial operations⁴ then, notwithstanding that an application may have been made to the court for variation or cancellation⁵, or that the owner may have begun to carry out the operations, and whether or not the period specified⁶ for carrying out the operations has expired, the local authority may at any time before the completion of the remedial operations cancel the notice by a further notice⁷ served⁸ on the owner⁹. Upon such cancellation the owner is no longer required to carry out the remedial operations, but the cancellation does not affect the right of the local authority to serve a further notice requiring remedial operations¹⁰.

Where a local authority has cancelled a notice requiring remedial operations, the owner may apply to the court¹¹ for an order directing the local authority to reimburse to him the whole, or such part as the court thinks fit, of: (1) any expenditure incurred by him in consequence of the service of that notice¹²; and (2) any expenditure¹³ incurred by him which is attributable to the cancellation¹⁴. In determining whether to make such an order¹⁵ or the extent of such reimbursement, the court must have regard to all the circumstances and, in particular, to the grounds of cancellation and to whether the local authority has served, or intends to serve, a further notice requiring remedial operations, or whether the local authority intends to carry out remedial operations itself¹⁶.

1 For the meaning of 'local authority' see PARA 561 note 3 ante.

2 For the meaning of 'owner' see PARA 562 note 5 ante.

3 For the meaning of 'disused tip' see PARA 561 note 1 ante.

4 As to the notice see PARA 564 ante. For the meaning of 'remedial operations' see PARA 564 note 8 ante.

5 See PARA 566 ante.

6 I.e. specified in the notice: see PARA 564 ante.

7 The notice must be in the prescribed form (see PARA 564 note 4 ante): see the Disused Mine and Quarry Tips (Prescribed Forms) Regulations 1969, SI 1969/807, reg 3(c), Schedule, Form 3.

8 As to the service of notices see PARA 580 post.

9 Mines and Quarries (Tips) Act 1969 s 16(1). The local authority must serve a copy of the notice of cancellation on every person on whom it served a copy of the notice requiring remedial works under s 14 (see PARA 564 note 12 ante): s 16(2).

10 See *ibid* s 16(3).

11 For the meaning of 'the court' see PARA 566 note 5 ante.

12 Mines and Quarries (Tips) Act 1969 s 16(4)(a).

13 I.e. whether relating to the reinstatement of any land, the cancellation of any contract or otherwise: see *ibid* s 16(4)(b).

14 *Ibid* s 16(4)(b).

15 le under ibid s 16(4): see s 16(5).

16 Ibid s 16(5). As to the carrying out of remedial operations by local authorities see PARA 568 post.

UPDATE

561-583 Prevention of Public Danger from Disused Tips in Mines and Quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/C. PREVENTION OF PUBLIC DANGER FROM DISUSED TIPS IN MINES AND QUARRIES/ (B) Remedial Operations, Compensation and Contribution/568. Remedial operations etc by local authorities.

568. Remedial operations etc by local authorities.

Where a local authority¹ considers that circumstances exist which would empower it to serve a notice requiring remedial operations² then, instead of serving such a notice, the authority may itself carry out remedial operations and any works of reinstatement reasonably necessary in consequence of those remedial operations³.

Where it proposes to carry out remedial operations under these provisions it must, within the specified period⁴, serve notice⁵ of its intention on the owner of the disused tip concerned specifying the nature and extent of the operations and of any consequential works of reinstatement which it proposes to carry out⁶. If, however, the local authority has reasonable ground for believing that a disused tip is unstable⁷ and that possible danger to members of the public requires the immediate carrying out of remedial operations, it may begin operations forthwith, notwithstanding that the required notice has not been given⁸; but if no such notice has been served when the remedial operations are begun, then, as soon thereafter as reasonably practicable, the local authority must serve notice⁹ on the owner of the tip of the commencement of the operations, specifying the nature and extent of the operations and of any consequential works of reinstatement which it proposes to carry out¹⁰.

A local authority may sell any material removed from a disused tip in the course of remedial operations carried out by it under these provisions and must account to the owner of the material for the proceeds of sale; but this does not prevent the local authority from setting off¹¹ the proceeds of sale or any part of them against any sum which under the statutory provisions¹² the authority is entitled to recover from the owner of the material¹³.

1 For the meaning of 'local authority' see PARA 561 note 3 ante.

2 See the Mines and Quarries (Tips) Act 1969 s 14(1) (as amended); and PARA 564 ante. For the meaning of 'remedial operations' see PARA 564 note 8 ante. As to the service of notices see PARA 580 post.

3 Ibid s 17(1).

4 I.e. not less than 21 days before the operations are begun: see ibid s 17(2). For the meaning of 'operations' see PARA 563 note 7 ante.

5 The notice must be in the prescribed form (see PARA 564 note 4 ante): ibid s 17(4). For the form of notice see the Disused Mine and Quarry Tips (Prescribed Forms) Regulations 1969, SI 1969/807, reg 3(d), Schedule, Form 4. Concurrently with the service of the notice on the owner of the disused tip, or as soon thereafter as is reasonably practicable, a copy must be served on the persons referred to in PARA 564 note 12 ante, with references there to the notice being construed for this purpose as references to the notice mentioned in the text to this note: Mines and Quarries (Tips) Act 1969 s 17(5). Notice, in the prescribed form, of remedial operations must be served on those persons where a local authority is the owner of a disused tip situated wholly or partly within its area: see s 17(7), Sch 2 paras 1, 2. For the form of notice see the Disused Mine and Quarry Tips (Prescribed Forms) Regulations 1969, SI 1969/807, reg 3(f), Schedule, Form 6. For the meaning of 'owner' see PARA 562 note 5 ante. For the meaning of 'disused tip' see PARA 561 note 1 ante.

6 Mines and Quarries (Tips) Act 1969 s 17(2).

7 As to instability see PARA 561 note 2 ante.

8 I.e. notwithstanding that no notice has been served as mentioned in the text to note 6 supra, or that less than 21 days has elapsed since the service of such a notice: see the Mines and Quarries (Tips) Act 1969 s 17(3).

9 The notice must be in the prescribed form: *ibid* s 17(4). For the form of notice see the Disused Mine and Quarry Tips (Prescribed Forms) Regulations 1969, SI 1969/807, reg 3(e), Schedule, Form 5.

10 Mines and Quarries (Tips) Act 1969 s 17(3).

11 As to rights of set-off generally see *CIVIL PROCEDURE* vol 11 (2009) PARA 634 et seq.

12 In the provisions of the Mines and Quarries (Tips) Act 1969 Pt II (ss 11-36) (as amended) subsequent to s 17(6): see s 17(6). See also s 21; and PARA 573 post.

13 *Ibid* s 17(6). See also s 14(7); and PARA 565 ante. Section 14(7) applies, with modifications, where a local authority has served notice of a determination to carry out remedial operations in relation to a disused tip of which it is the owner and which is situated wholly or partly within its area: see s 17(7), Sch 2 paras 1, 3(a).

UPDATE

561-583 Prevention of Public Danger from Disused Tips in Mines and Quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see *LOCAL GOVERNMENT* vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/C. PREVENTION OF PUBLIC DANGER FROM DISUSED TIPS IN MINES AND QUARRIES/ (B) Remedial Operations, Compensation and Contribution/569. Right of entry to carry out remedial operations etc.

569. Right of entry to carry out remedial operations etc.

Where a local authority¹ has served notice² of its intention to carry out remedial operations³ in relation to a disused tip⁴, or where the circumstances are such that the authority may begin such operations without notice⁵, a person duly authorised in writing⁶ by the authority may at any reasonable time enter upon the land on which the disused tip is situated, or upon any neighbouring land, for any purpose connected with the remedial operations or consequential works of reinstatement; but a person so authorised must not demand admission as of right to any occupied land unless 24 hours' written notice has been given to the occupier⁷.

If it is shown to the satisfaction of a justice of the peace on sworn information in writing⁸ that: (1) admission to any land which any person is entitled to enter has been refused, or that a refusal is apprehended, or that the occupier is temporarily absent; and (2) there is reasonable ground for entry on to the land for the purpose for which entry is required, the justice may by warrant authorise that person to enter the land if need be by force⁹. However, a warrant is not to be issued on the ground that entry has been refused or that a refusal of entry is apprehended unless the justice is satisfied that notice in writing of the intention to apply for a warrant has been given to the occupier¹⁰. Where the circumstances are such that the local authority may begin remedial operations without notice¹¹, the right of entry under these provisions may be exercised without notice or warrant¹².

Any person who wilfully obstructs¹³ a person exercising these powers is liable on summary conviction to a fine not exceeding level 3 on the standard scale¹⁴.

1 For the meaning of 'local authority' see PARA 561 note 3 ante.

2 As to the service of notices see PARA 580 post.

3 For the meaning of 'remedial operations' see PARA 564 note 8 ante.

4 I.e. under the Mines and Quarries (Tips) Act 1969 s 17(2) (see PARA 568 ante): see s 18(1). For the meaning of 'disused tip' see PARA 561 note 1 ante.

5 See *ibid* s 17(3); and PARA 568 ante.

6 The person authorised must, if required, produce evidence of his authority and may take on to the land such other persons and such equipment as may be necessary: *ibid* s 18(5).

7 *Ibid* s 18(1). See, however, the text to notes 10-11 *infra*. Section 18 (as amended) applies also where a local authority has served notice of a determination to carry out remedial operations in relation to a disused tip of which it is the owner and which is situated wholly or partly within its area: s 17(7), Sch 2 paras 1, 3(b).

8 See generally MAGISTRATES.

9 Mines and Quarries (Tips) Act 1969 s 18(2). Every warrant granted under s 18(2) continues in force until the purpose for which the entry is required has been satisfied: s 18(3).

10 *Ibid* s 18(2).

11 See *ibid* s 17(3); and PARA 568 ante.

12 *Ibid* s 18(4).

13 See PARA 412 notes 5-6 ante.

14 Mines and Quarries (Tips) Act 1969 s 18(6) (amended by the Criminal Justice Act 1982 ss 35, 37, 38, 46).
As to the standard scale see PARA 98 note 12 ante.

UPDATE

561-583 Prevention of Public Danger from Disused Tips in Mines and Quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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570. Compensation for damage or disturbance.

Subject to certain provisions¹, where, as a result of exploratory tests² or remedial operations³, any land on which entry is made for the purpose of those tests or operations⁴ is damaged, or any person is disturbed in his enjoyment of any land, then any person interested in the damaged land or, as the case may be, disturbed in his enjoyment of any land is entitled to recover compensation⁵. The compensation is recoverable from the local authority or, in the case of damage or disturbance resulting from remedial operations by the owner of the disused tip, from him⁶.

Any dispute arising on a claim for compensation is to be determined by the court⁷.

1 Ie the Mines and Quarries (Tips) Act 1969 s 20(2)-(6): see s 20(1).

2 As to exploratory tests see PARA 563 ante.

3 Ie remedial operations carried out by the owner in pursuance of a notice under the Mines and Quarries (Tips) Act 1969 s 14 (as amended) (see PARA 564 ante), or by the local authority under s 17(2) (see PARA 568 ante): see s 20(1). For the meaning of 'remedial operations' see PARA 564 note 8 ante; for the meaning of owner see PARA 562 note 5 ante; and for the meaning of 'local authority' see PARA 561 note 3 ante. Section 20(1)-(3) applies in relation to damage or disturbance resulting from works of reinstatement consequential upon any remedial operations, and references to remedial operations include references to such works: s 20(4). The provisions apply also where remedial operations are carried out by a local authority in relation to a tip of which it is the owner and which is situated wholly or partly within its area: s 17(7), Sch 2 para 5.

4 See PARAS 563, 569 ante.

5 Mines and Quarries (Tips) Act 1969 s 20(1). This provision does not entitle the owner of a disused tip to compensation for damage or disturbance resulting from remedial operations by him or any other person who was the owner of the disused tip when the remedial operations were carried out: s 20(3). For the meaning of 'disused tip' see PARA 561 note 1 ante. As to compensation in respect of ecclesiastical property see PARA 581 post.

6 Ibid s 20(2). These provisions have effect subject to the subsequent provisions of Pt II (ss 11-36) (as amended): s 20(2).

7 Ibid s 20(5). For the meaning of 'the court' see PARA 566 note 5 ante.

UPDATE

561-583 Prevention of Public Danger from Disused Tips in Mines and Quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/C. PREVENTION OF PUBLIC DANGER FROM DISUSED TIPS IN MINES AND QUARRIES/ (B) Remedial Operations, Compensation and Contribution/571. Claims for compensation by owners and contributories.

571. Claims for compensation by owners and contributories.

Special provisions¹ have effect in certain circumstances² in relation to any claim for compensation for damage or disturbance³ by the owner of a disused tip or by a contributory⁴. Where these provisions apply to the owner of a disused tip, then until the expiry of 12 months beginning with the date on which remedial operations by the local authority were completed, the owner is not in general⁵ entitled to enforce his claim otherwise than by way of set-off⁶ against any sum demanded from him by the local authority⁷ in respect of expenses and related matters referable to exploratory tests and remedial operations⁸. Similarly, where these provisions apply to a contributory, then until the expiry of the relevant period⁹ the contributory is not in general¹⁰ entitled to enforce his claim otherwise than by way of set-off against any sum demanded from him by the owner of the disused tip¹¹ or by the local authority¹² by way of contribution¹³.

The time within which an owner or contributory to whom the above provisions apply may bring proceedings to recover the whole or any part of the compensation to which his claim refers is, in general, six years from the expiry of the period of 12 months¹⁴ referred to above¹⁵ in relation to an owner or, as the case may be, of the relevant period¹⁶ in relation to a contributory¹⁷.

1 le the Mines and Quarries (Tips) Act 1969 s 20(6), Sch 3 (as amended).

2 Ibid Sch 3 (as amended) applies to the owner of a disused tip if: (1) a local authority has carried out remedial operations in relation to that tip (see PARA 568 ante) or has carried out any exploratory tests which gave rise to the remedial operations (Sch 3 para 1(1)(a)); (2) the owner has served on the local authority a claim for compensation under s 20 (see PARA 570 ante) in respect of damage or disturbance resulting from those exploratory tests or remedial operations (Sch 3 para 1(1)(b)); and (3) either no order for contribution has been made under s 19 (see PARA 572 post) in respect of the expenses otherwise falling to be borne by the owner in respect of those tests or operations or one or more such orders have been made but the specified percentage (as to which see PARA 572 post) or, as the case may be, the aggregate of the specified percentages is less than 100 (Sch 3 para 1(1)(c)). For the meaning of 'owner' see PARA 562 note 5 ante; for the meaning of 'disused tip' see PARA 561 note 1 ante; for the meaning of 'local authority' see PARA 561 note 3 ante; and for the meaning of 'remedial operations' see PARA 564 note 8 ante. As to exploratory tests see PARA 563 ante. In Sch 3 (as amended) any reference to remedial operations includes a reference to works of reinstatement consequential on those remedial operations: Sch 3 para 4.

Schedule 3 (as amended) applies to a contributory if: (a) the expenses in respect of which a contribution may be claimed by the owner under s 21 (see PARA 573 post) or by the local authority under s 23 (as amended) (see PARA 575 post) include expenses incurred in carrying out remedial operations or exploratory tests which gave rise to the remedial operations or to the service of a notice requiring the owner to carry out remedial operations (see PARA 564 ante) (Sch 3 para 1(2)(a)); and (b) the contributory has served on the owner of the disused tip or, as the case may be, the local authority concerned a claim for compensation under s 20 (see PARA 570 ante) in respect of damage or disturbance resulting from those exploratory tests or remedial operations (Sch 3 para 1(2)(b)). Schedule 3 para 1(2) applies subject to modifications where a local authority carries out remedial operations on a disused tip of which it is the owner: see Sch 3 para 5(a). 'Contributory' means the person to whom an order under s 19 (see PARA 572 post) relates: ss 19(6), 36(1).

3 See PARA 570 ante.

4 Mines and Quarries (Tips) Act 1969 s 20(6); and see note 2 supra.

5 Where a demand under ibid s 23(4) (see PARA 575 post) in respect of expenditure on exploratory tests or remedial operations (see PARA 575 post) is served by the local authority concerned on the owner of a disused tip to whom the provisions of Sch 3 (as amended) apply and the amount recoverable by virtue of that demand,

having regard to any application made by the owner to the court for variation or cancellation, is less than the amount of the owner's claim for compensation against the local authority, Sch 3 para 2(1), does not apply to any proceedings brought by the owner to recover the balance of that compensation from the local authority: Sch 3 para 2(2).

6 As to rights of set-off generally see CIVIL PROCEDURE vol 11 (2009) PARA 634 et seq.

7 See PARA 575 post.

8 Mines and Quarries (Tips) Act 1969 Sch 3 para 2(1).

9 The relevant period is: (1) in relation to a claim by a contributory for compensation recoverable from the owner, the period of 12 months beginning with the date of the completion by the owner of the remedial operations in relation to the tip (ibid Sch 3 para 3(3)(a)); (2) in relation to a claim by a contributory for compensation recoverable from a local authority where the expenses in respect of which a contribution may be claimed by him from the local authority are such as are mentioned in s 23(1) (as amended) (see PARA 575 post), the period of 12 months beginning with the date of completion of the remedial operations referred to in s 23 (as amended) (Sch 3 para 3(3)(b)); and (3) in relation to such a claim as is mentioned in head (2) supra where the expenses in respect of which a contribution may be claimed by the contributory from the local authority are such as are mentioned in s 23(3) (see PARA 575 post), the period of 12 months beginning with the date of completion of the exploratory tests referred to in s 23 (as amended) (Sch 3 para 3(3)(c)). In relation to head (2) supra, Sch 3 para 3(2) applies also, subject to modifications, where a local authority carries out remedial operations in relation to a tip situated wholly or partly within its area and of which it is the owner: Sch 3 para 5(c).

10 Where a demand for contribution under ibid s 21 (see PARA 573 post) or s 23 (as amended) (see PARA 575 post) in respect of the expenses referred to in note 2 head (a) supra is served on a contributory to whom the provisions of Sch 3 (as amended) apply, and the amount recoverable by virtue of that demand, having regard to any application made by the contributory to the court for variation (see PARAS 574, 576 post) or cancellation (see PARA 568 post), is less than the amount of the contributory's claim for compensation against the person or local authority making the demand, Sch 3 para 3(1) does not apply to any proceedings brought by the contributory to recover the balance of that compensation from that person or local authority: Sch 3 para 3(2). This also applies, subject to modifications, where a local authority carries out remedial operations in relation to a tip situated wholly or partly within its area and of which it is the owner: Sch 3 para 5(a), (b).

11 As to demands by the owner see PARA 573 post.

12 As to demands by the local authority see PARA 575 post.

13 Mines and Quarries (Tips) Act 1969 Sch 3 para 3(1). This also applies, subject to modifications, where a local authority carries out remedial operations in relation to a tip situated wholly or partly within its area and of which it is the owner: Sch 3 para 5(a).

14 In any case referred to in ibid Sch 3 para 2(2) or Sch 3 para 2(3) the time is six years from the date of service of the demand there referred to: Sch 3 para 6(1)(b).

15 See the text to note 8 supra.

16 See note 9 supra.

17 Mines and Quarries (Tips) Act 1969 Sch 3 para 6(1)(a). Schedule 3 para 6(1) is to be construed as one with the Limitation Act 1980 Pt I (ss 1-27) (as amended) (see LIMITATION PERIODS): Mines and Quarries (Tips) Act 1969 Sch 3 para 6(2) (amended by the Limitation Act 1980 s 40(2), Sch 3).

UPDATE

561-583 Prevention of Public Danger from Disused Tips in Mines and Quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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572. Contribution orders.

Where the local authority¹ has served on the owner² of a disused tip³ a notice requiring remedial operations⁴ or a notice that the authority will carry out remedial operations⁵, an application to the court⁶ may be made within a specified period⁷ for an order that a contribution towards the expenses otherwise falling to be borne by the owner⁸ as a result of the remedial operations is to be made by any one or more of other specified persons⁹ on whom notice of the application has been served¹⁰. Such an application may be made by the owner and, in the case of a notice that the local authority will carry out remedial operations¹¹, the local authority¹². The persons, known as 'contributories'¹³, to whom the order may relate are: (1) any person who at the date of service of the notice relating to remedial operations¹⁴ had an estate or interest, otherwise than as a mortgagee¹⁵, in the land on which the tip is situated and any person who had such an estate or interest at any time within the period of 12 years immediately preceding that date¹⁶; (2) any other person who has, at any time within that period, used the tip for the deposit of refuse from a mine or quarry¹⁷; and (3) any other person who, in the court's opinion, has at any time within that period caused or contributed to the instability¹⁸ of the tip by the carrying out of any operations¹⁹ on the tip, on the land on which it is situated or on neighbouring land or by failing to take any steps which he might reasonably have taken to prevent the tip from becoming unstable²⁰.

An order made under these provisions must specify the amount of the contribution to be made by the person to whom it relates as a percentage, called 'the specified percentage'²¹, which, if the court thinks appropriate, may be 100 per cent of the total amount in respect of which a contribution can be claimed²². In determining whether to make an order requiring any person to make a contribution or the amount of any contribution the court must have regard to all the circumstances of the case and, in particular to: (a) the extent to which that person has, by act or omission, contributed to the instability of the tip²³; (b) the extent to which he has used the tip for the deposit of refuse²⁴; (c) the nature and extent of any estate or interest which he had, at the date of service of the notice²⁵ relating to remedial operations, in the land on which the tip is situated²⁶; (d) in the case of a person who had such an estate or interest but disposed of it before that date, whether he did so to evade any liability²⁷ in connection with the tip²⁸; and (e) the terms of any covenant, agreement or statutory provision affecting the rights and obligations in relation to that tip of that person and its owner²⁹.

1 For the meaning of 'local authority' see PARA 561 note 3 ante.

2 For the meaning of 'owner' see PARA 562 note 5 ante.

3 For the meaning of 'disused tip' see PARA 561 note 1 ante.

4 For the meaning of 'remedial operations' see PARA 564 note 8 ante. As to such a notice see PARA 564 ante. As to the service of notices see PARA 580 post.

5 See PARA 568 ante. Where a local authority has served notice of a determination to carry out remedial operations in relation to a disused tip of which it is the owner and which is situated wholly or partly within its area, then, at any time within the period of three months beginning with the date of commencement of those operations, the local authority may apply under the Mines and Quarries (Tips) Act 1969 s 19; and for that purpose s 19 has effect subject to modifications: see s 17(7), Sch 2 paras 1, 4.

6 For the meaning of 'the court' see PARA 566 note 5 ante.

7 The application is of no effect unless it is made within the following period: (1) where it relates to a notice under the Mines and Quarries (Tips) Act 1969 s 14 requiring remedial operations (see PARA 564 ante) and there is no appeal under s 15 against that notice (see PARA 566 ante), the period of three months beginning with the date of service of that notice on the owner (s 19(3)(a)); (2) where it relates to such a notice and there is an appeal against that notice, the period beginning with the date of service of that notice and ending three months after the date on which the appeal is withdrawn or finally determined (s 19(3)(b)); and (3) where it relates to a notice under s 17 that the local authority will carry out remedial operations (see PARA 568 ante), the period of three months beginning with the date of service of that notice on the owner (s 19(3)(c)).

8 As to the right of a local authority to recover expenses from the owner see PARA 575 post.

9 As to the specified persons see heads (1)-(3) in the text.

10 Mines and Quarries (Tips) Act 1969 s 19(1).

11 See *ibid* s 17; and PARA 568 ante.

12 See *ibid* s 19(2).

13 For the meaning of 'contributory' see PARA 571 note 2 ante.

14 Is a notice under the Mines and Quarries (Tips) Act 1969 s 14 (as amended) (see PARA 564 ante) requiring remedial operations or a notice under s 17 (see PARA 568 ante) that the local authority will carry out remedial operations: see s 19(1)(a).

15 As to estates and interests of mortgagees see MORTGAGE vol 77 (2010) PARA 101 et seq.

16 Mines and Quarries (Tips) Act 1969 s 19(1)(a).

17 *Ibid* s 19(1)(b). For the meaning of 'mine' see PARA 5 note 14 ante; and for the meaning of 'quarry' see PARA 6 note 7 ante (definitions applied by s 1(3)(a)).

18 As to instability see PARA 561 note 2 ante.

19 For the meaning of 'operations' see PARA 563 note 7 ante.

20 Mines and Quarries (Tips) Act 1969 s 19(1)(c).

21 *Ibid* ss 19(6), 36(1).

22 *Ibid* s 19(5).

23 *Ibid* s 19(4)(a).

24 *Ibid* s 19(4)(b).

25 Is under *ibid* s 14 (as amended) or s 17: see s 19(4)(c).

26 *Ibid* s 19(4)(c).

27 Is whether under *ibid* Pt II (ss 11-36) (as amended) or otherwise: see s 19(4)(d).

28 *Ibid* s 19(4)(d).

29 *Ibid* s 19(4)(e).

UPDATE

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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573. Recovery from contributories of owner's expenses.

Subject to certain provisions¹, where remedial operations² have been carried out by the owner³ of a disused tip⁴ in compliance with a notice requiring such operations⁵, and an order for contribution towards the owner's expenses has been made⁶, the owner is entitled to recover from the contributory⁷ the specified percentage⁸ of the aggregate⁹ of: (1) the expenses reasonably incurred by the owner in the remedial operations and any works of reinstatement reasonably necessary in consequence of those operations¹⁰; (2) the amount of any compensation for damage or disturbance¹¹ referable to those operations or works which is recoverable, or has been recovered¹², from the owner¹³; and (3) the amount of any such compensation in respect of which the owner could himself have made a claim¹⁴ if the operations, and any such works, had been carried out by the local authority¹⁵.

No contribution is recoverable under these provisions unless a demand for it, containing specified particulars¹⁶, is served¹⁷ on the contributory¹⁸.

Where remedial operations have been carried out as mentioned above¹⁹ and the notice requiring such operations has been cancelled by the local authority²⁰, these provisions²¹ and related provisions as to appeals²² have effect subject to modifications²³.

1 Ie the Mines and Quarries (Tips) Act 1969 s 21(2)-(4): see s 21(1).

2 For the meaning of 'remedial operations' see PARA 564 note 8 ante.

3 For the meaning of 'owner' see PARA 562 note 5 ante.

4 For the meaning of 'disused tip' see PARA 561 note 1 ante.

5 As to such notices see the Mines and Quarries (Tips) Act 1969 s 14 (as amended); and PARA 564 ante.

6 As to such orders see *ibid* s 19; and PARA 572 ante.

7 For the meaning of 'contributory' see PARAS 571 note 2, 572 ante.

8 For the meaning of 'the specified percentage' see PARA 572 ante.

9 Mines and Quarries (Tips) Act 1969 s 21(1).

10 Ibid s 21(2)(a).

11 Ie any such compensation as is mentioned in *ibid* s 20(2)(b) (see PARA 570 ante): see s 21(2)(b).

12 Ie in pursuance of a claim under *ibid* s 20 (see PARAS 570-571 ante): see s 21(2)(b).

13 Ibid s 21(2)(b).

14 Ie under *ibid* s 20 (see PARAS 570-571 ante): see s 21(2)(c).

15 Ibid s 21(2)(c). For the meaning of 'local authority' see PARA 561 note 3 ante. Similar provisions have effect where: (1) a local authority has carried out remedial operations in relation to a tip situated wholly or partly within its area and of which it is the owner; and (2) an order has been made under s 19 (see PARA 564 ante) requiring any person to make a contribution towards the expenses otherwise falling to be borne by the local authority as such owner: see s 17(7), Sch 2 paras 1, 6(1). Section 23(5) (as amended), which deals with

the payment of interest and payment by instalments (see PARA 575 post) applies to any sum so recoverable: see Sch 2 para 6(3).

16 The demand must specify, in addition to the sum claimed by way of contribution, the total amount in respect of which contribution is claimed (ibid s 21(3)(a)) and the separate amounts which comprise that total, distinguished by reference to s 21(2)(a)-(c) (see heads (1)-(3) in the text) (s 21(3)(b)).

17 As to the service of notices see PARA 580 post.

18 Mines and Quarries (Tips) Act 1969 s 21(3). See also Sch 2 paras 1, 6(2).

19 Ie by the owner of a disused tip in compliance with a notice under ibid s 14: see s 21(4).

20 See PARA 567 ante.

21 Ie the provisions of the Mines and Quarries (Tips) Act 1969 s 21.

22 See ibid s 22; and PARA 574 post.

23 See ibid s 21(4), Sch 4. Schedule 4 contains modifications as to references to remedial operations (Sch 4 paras 1, 2), the determination of the expenses reasonably incurred by the owner in carrying out remedial operations and works of reinstatement (Sch 4 paras 1, 3), and the particulars to be given in demands for payment (Sch 4 paras 1, 4(a), (b)).

UPDATE

561-583 Prevention of Public Danger from Disused Tips in Mines and Quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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574. Appeals against demands for recovery of owner's expenses.

A contributory¹ may apply to the court², within a specified period³ and on specified grounds⁴, for variation of a demand for recovery of the contribution⁵ in respect of the owner's expenses; and if the court is satisfied that the ground, or any of the grounds, of the application is made out, it may make an order reducing the amount recoverable by the owner to such amount as the court thinks fit⁶.

Subject to this right of appeal and to modifications which apply where the notice requiring remedial operations has been cancelled by the local authority⁷, such a demand is final and conclusive⁸.

1 For the meaning of 'contributory' see PARAS 571 note 2, 572 ante.

2 For the meaning of 'the court' see PARA 566 note 5 ante.

3 Ie the period of six weeks beginning with the date of service of the demand on the contributory: see the Mines and Quarries (Tips) Act 1969 s 22(1).

4 The grounds are that: (1) the amount of the expenses incurred by the owner in the remedial operations was greater than was reasonable (ibid s 22(1)(a)); (2) the amount of the expenses incurred by the owner in works of reinstatement was greater than was reasonably necessary to reinstate the land in consequence of the remedial operations (s 22(1)(b)); (3) because the time taken by the owner in remedial operations or any consequential works of reinstatement was unreasonably long, compensation under s 20 in respect of damage or disturbance (see PARA 570 ante) is greater than it would otherwise have been (s 22(1)(c)); (4) the amount of any compensation in respect of damage or disturbance is greater than necessary to compensate the person concerned (s 22(1)(d)); (5) the amount specified in the demand as being referable to s 21(2)(c) (see PARA 573 head (3) ante) is greater than the compensation which could have been claimed by the owner in the circumstances specified in head (3) supra (s 22(1)(e)); (6) the amount claimed in the demand is greater than the specified percentage (as to which see PARA 572 ante) of the amount determined under s 21(2) as the aggregate of the expenses and amounts mentioned in PARA 573 heads (1)-(3) ante (s 22(1)(f)). For the meaning of 'owner' see PARA 562 note 5 ante; and for the meaning of 'remedial operations' see PARA 564 note 8 ante.

5 Ie under ibid s 21(3) (see PARA 573 ante): see s 22(1).

6 Ibid s 22(2). Similar provisions have effect in the circumstances mentioned in PARA 573 note 15 ante: see s 17(7), Sch 2 paras 1, 6(4). Section 24(4), which deals with circumstances in which the court may make an order (see PARA 576 post), applies in relation to an application made in such circumstances; and, subject to the right to make such an application, the demand of the local authority for contribution is final and conclusive: Sch 2 paras 1, 6(5). For the meaning of 'local authority' see PARA 561 note 3 ante.

7 See ibid s 21(4), Sch 4; and PARA 573 ante. Schedule 4 contains modifications as to references to remedial operations (Sch 4 paras 1, 2), the determination of the expenses reasonably incurred by the owner in carrying out remedial operations and works of reinstatement (Sch 4 paras 1, 3), and the grounds for an application to the court (Sch 4 paras 1, 4(c)).

8 Ibid s 22(3).

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561-583 Prevention of Public Danger from Disused Tips in Mines and Quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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(C) RECOVERY OF EXPENSES; GRANTS

575. Right of local authority to recover expenses.

Subject to certain provisions¹, where a local authority² has carried out remedial operations³ in relation to a disused tip⁴, the authority is entitled to recover from the owner⁵ of the tip: (1) the expenses reasonably incurred by the authority in any exploratory tests⁶ which gave rise to the remedial operations⁷; (2) the expenses so incurred in the remedial operations and any works of reinstatement reasonably necessary in consequence of those operations⁸; and (3) the amount of any compensation for damage or disturbance⁹ referable to those tests, operations or works which is recoverable, or has been recovered¹⁰, from the local authority¹¹.

Subject to certain provisions¹², where a local authority has carried out, in relation to a disused tip, exploratory tests which resulted in the service of a notice requiring remedial operations, the authority is entitled to recover from the owner: (a) the expenses reasonably incurred by the authority in carrying out those tests¹³; (b) such sum, not exceeding 5 per cent of the expenses referred to in head (a) above, as the authority thinks fit in respect of its establishment charges¹⁴; and (c) the amount of any compensation for damage or disturbance referable to those tests which is recoverable, or has been recovered, from the local authority¹⁵.

Where a contribution order¹⁶ has been made requiring any person to contribute towards the expenses otherwise falling to be borne by the owner of a disused tip as a result of the remedial operations referred to above¹⁷, the local authority is entitled to recover from the contributory¹⁸ the specified percentage¹⁹ of the amount recoverable²⁰ from the owner²¹, and the amount recoverable from the owner is reduced accordingly²².

No sum is recoverable under these provisions unless a demand for it, containing specified particulars²³, is served²⁴ on the owner or, as the case may be, the contributory concerned²⁵.

Together with any sum recoverable by a local authority from the owner of a disused tip or from a contributory, the local authority is entitled to recover interest from the date of service on him of the demand until the total amount recoverable from that person is paid, at such reasonable rate as the authority may determine²⁶. With the agreement of the local authority, any sum so recoverable may be paid in such instalments as may be agreed²⁷.

1 In the Mines and Quarries (Tips) Act 1969 ss 23(2)-(6), 24, 25 (as amended): see s 23(1).

2 For the meaning of 'local authority' see PARA 561 note 3 ante.

3 For the meaning of 'remedial operations' see PARA 564 note 8 ante.

4 In the Mines and Quarries (Tips) Act 1969 s 17 (see PARA 568 ante): see s 23(1). For the meaning of 'disused tip' see PARA 561 note 1 ante.

5 For the meaning of 'owner' see PARA 562 note 5 ante. For these purposes, the owner of the disused tip is the person who was the owner at the date of the commencement of the remedial operations: *ibid* s 23(6)(a).

6 As to exploratory tests see PARA 563 ante.

7 Mines and Quarries (Tips) Act 1969 s 23(1)(a). For the purposes of s 23, exploratory tests relating to a disused tip are deemed to give rise to remedial operations in relation to that tip or, as the case may be, to

result in the service of a notice requiring remedial operations if, within the period of six months after the completion of the tests, the local authority began those operations or served the notice requiring remedial operations: s 23(6)(b).

8 Ibid s 23(1)(b).

9 Ie any compensation such as is mentioned in ibid s 20(2) (see PARA 570 ante): see s 23(1)(d).

10 Ie in pursuance of a claim under ibid s 20 (see PARAS 570-571 ante): see s 23(1)(d).

11 Ibid s 23(1)(d).

12 Ie ibid ss 23(3)-(6), 24: see s 23(2).

13 Ibid s 23(2)(a).

14 Ibid s 23(2)(b).

15 Ibid s 23(2)(c).

16 Ie an order under ibid s 19 (see PARA 572 ante): see s 23(3).

17 Ie in ibid s 23(1) or s 23(2): see s 23(3).

18 For the meaning of 'contributory' see PARAS 571 note 2, 572 ante.

19 For the meaning of 'the specified percentage' see PARA 572 ante.

20 Ie disregarding the reduction referred to in the text to note 22 infra.

21 Mines and Quarries (Tips) Act 1969 s 20(3)(a).

22 Ibid s 20(3)(b).

23 The demand must specify, in addition to the sum claimed by the local authority: (1) in the case of a demand served on a contributory, the total amount in respect of which the contribution is claimed (ibid s 23(4)(a)); (2) in the case of a demand served on the owner, the sums, if any, which the local authority is entitled to recover from any contributory or contributories (s 23(4)(b)); and (3) in either case, the separate amounts which comprise the total amount recoverable by the local authority, distinguished by reference to s 23(1)(a)-(d) (as amended) (see heads (1)-(3) in the text) or, as the case may be s 23(2)(a)-(c) (see heads (a)-(c) in the text) (s 23(4)(c)).

24 As to the service of documents see PARA 580 post.

25 Mines and Quarries (Tips) Act 1969 s 23(4).

26 Ibid s 23(5) (amended by the Local Government, Planning and Land Act 1980 s 1(6), Sch 6 para 12).

27 Mines and Quarries (Tips) Act 1969 s 23(5).

UPDATE

561-583 Prevention of Public Danger from Disused Tips in Mines and Quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/C. PREVENTION OF PUBLIC DANGER FROM DISUSED TIPS IN MINES AND QUARRIES/ (C) Recovery of Expenses; Grants/576. Appeals against demands by local authorities.

576. Appeals against demands by local authorities.

An owner¹ of a disused tip², or a contributory³, on whom was served a demand by a local authority⁴ for recovery of expenses⁵ may apply to the court⁶ within a specified period⁷ and on specified grounds⁸ for variation or cancellation of the demand⁹. If on such an application the court is satisfied that any ground is made out, it may make an order either cancelling the demand or reducing the amount recoverable from the person concerned to such amount as it thinks fit¹⁰. Subject to this right of appeal, such a demand is final and conclusive¹¹.

1 For the meaning of 'owner' see PARA 562 note 5 ante.

2 For the meaning of 'disused tip' see PARA 561 note 1 ante.

3 For the meaning of 'contributory' see PARAS 571 note 2, 572 ante.

4 For the meaning of 'local authority' see PARA 561 note 3 ante.

5 Ie a demand under the Mines and Quarries (Tips) Act 1969 s 23(4) (see PARA 575 ante): see s 24(1).

6 For the meaning of 'the court' see PARA 566 note 5 ante.

7 Ie the period of six weeks beginning with the date of the service of the demand on the owner or contributory: see the Mines and Quarries (Tips) Act 1969 s 24(1).

8 Where the demand is made in a case falling within *ibid* s 23(1) (as amended), where the local authority has carried out remedial operations, the grounds are: (1) that the amount of the expenses incurred by it in the exploratory tests or remedial operations was greater than was reasonable (s 24(2)(a)); (2) that the amount of the expenses incurred by it in works of reinstatement was greater than was reasonably necessary to reinstate the land in consequence of the remedial operations (s 24(2)(b)); (3) that at the time the remedial operations were begun, there was no reasonable ground for believing that the tip was unstable (see PARA 561 note 2 ante) or that, by reason of instability, the tip constituted, or was likely to constitute, a danger to members of the public (s 24(2)(c)); (4) that the remedial operations were more extensive than was necessary to secure the safety of members of the public (s 24(2)(d)); (5) that because the time taken by the local authority in the exploratory tests or remedial operations or any consequential works of reinstatement was unreasonably long, compensation under s 20 in respect of damage or disturbance (see PARA 570 ante) is greater than it would otherwise have been (s 24(2)(e)); (6) that the amount of any compensation in respect of damage or disturbance is greater than necessary to compensate the person concerned (s 24(2)(f)); (7) that in the case of a demand served on a contributory, the amount claimed in the demand is greater than the specified percentage (as to which see PARA 572 ante) of the amount determined under s 23(1) (as amended) (see PARA 575 ante) (s 24(2)(g)); (8) that in the case of a demand served on the owner, the amount claimed in the demand does not give proper allowance for any sum which the local authority is entitled to recover from a contributory (s 24(2)(h)). Where the demand is made in a case falling within s 23(2) where the local authority has carried out exploratory tests which resulted in a notice requiring remedial operations, five grounds are specified, corresponding with those in heads (1), (5)-(8) *supra*, but with the substitution, for the reference in head (7) to s 23(1) (as amended), of a reference to s 23(2): see s 24(3)(a)-(e). As to exploratory tests see PARA 563 ante. For the meaning of 'remedial operations' see PARA 564 note 8 ante.

9 See *ibid* s 24(1).

10 *Ibid* s 24(4).

11 *Ibid* s 24(5).

UPDATE

561-583 Prevention of Public Danger from Disused Tips in Mines and Quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/C. PREVENTION OF PUBLIC DANGER FROM DISUSED TIPS IN MINES AND QUARRIES/ (C) Recovery of Expenses; Grants/577. Grants towards local authority expenditure.

577. Grants towards local authority expenditure.

The Secretary of State¹ may, with Treasury consent, make grants to a local authority² towards expenditure incurred by the local authority in or in connection with remedial operations³, any previous exploratory tests⁴ and any consequential works of reinstatement⁵. Such grants are to be of such amounts and payable at such times and subject to such conditions as the Secretary of State may determine, either generally or in the case of any particular local authority or grant⁶; and they may be made either as periodical grants in respect of costs incurred or treated as incurred in respect of borrowings by the authority to defray qualifying expenditure, or as capital grants in respect of such expenditure or in substitution for such periodical grants⁷.

Where such a grant is made the Secretary of State may, after consultation with the local authority, direct that, having regard to the amount of the grant, the total amount recoverable⁸ from the owner⁹ of the tip and any contributories¹⁰ in respect of remedial operations carried out by the authority¹¹ is to be limited to an amount specified in the direction¹², and the amount so recoverable is then limited accordingly¹³.

1 The Mines and Quarries (Tips) Act 1969 refers to the Minister of Housing and Local Government as the appropriate minister (see s 36(4)); as to the transfer of functions to the Secretary of State see PARA 4 ante.

2 For the meaning of 'local authority' see PARA 561 note 3 ante. Where, by virtue of the Local Government Act 1972 Pt VI (ss 101-109) (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 370 et seq), a district council incurs any such expenditure as is referred to in the Mines and Quarries (Tips) Act 1969 s 25(1), grants under s 25 (as amended) may be made to that council and references to a local authority are to be construed accordingly: s 25(6) (added by the Local Government Act 1972 s 251(2), Sch 29 para 28).

3 For the meaning of 'remedial operations' see PARA 564 note 8 ante.

4 As to exploratory tests see PARA 563 ante.

5 Mines and Quarries (Tips) Act 1969 s 25(1). Sums required for the payment of such grants are to be defrayed out of money provided by Parliament (s 37(a)), as is any increase attributable to the Mines and Quarries (Tips) Act 1969 in the sums payable out of money so provided under any other enactment (s 37(b)).

6 Ibid s 25(2).

7 Ibid s 25(3). As to grants generally to local authorities see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 531 et seq.

8 Ie under ibid s 23 (as amended) (see PARA 575 ante): see s 25(4).

9 For the meaning of 'owner' see PARA 562 note 5 ante.

10 For the meaning of 'contributory' see PARAS 571 note 2, 572 ante.

11 See the Mines and Quarries (Tips) Act 1969 s 23(1)(a)-(d) (s 23(1)(c) repealed by the Local Government Act 1972 s 42(2), Sch 8); and PARA 575 ante.

12 Mines and Quarries (Tips) Act 1969 s 25(4). Where (1) a local authority has carried out remedial operations in relation to a tip situated wholly or partly within its area and of which it is the owner (see s 17(7), Sch 2 paras 1, 7(1)(a)); (2) an order has been made under s 19 (see PARA 572 ante) (Sch 2 para 7(1)(b)); and (3) a grant has been made under s 25 (as amended) and the Secretary of State proposes to give a direction under s 25(4) (Sch 2 para 7(1)(c)), the provisions of s 25(4) and Sch 2 para 6 have effect subject to modifications: see Sch 2 paras 1, 7(1), (2).

13 See *ibid* s 25(5). In such a case ss 23(3), (4), 24(2) have effect subject to consequential modifications: see s 25(5)(a)-(e).

UPDATE

561-583 Prevention of Public Danger from Disused Tips in Mines and Quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/C. PREVENTION OF PUBLIC DANGER FROM DISUSED TIPS IN MINES AND QUARRIES/ (D) Miscellaneous and Supplemental/578. Penalties for obstructing remedial operations and damaging works.

(D) MISCELLANEOUS AND SUPPLEMENTAL

578. Penalties for obstructing remedial operations and damaging works.

Any person who wilfully¹ prevents or interferes with exploratory tests² or remedial operations³ is liable on summary conviction to a fine not exceeding level 3 on the standard scale⁴. Any person who wilfully damages or otherwise interferes with works completed in the course of remedial operations for the purpose of ensuring the stability of a disused tip⁵ is liable similarly to a fine not exceeding level 5 on the standard scale⁶.

1 See PARA 412 note 5 ante.

2 As to exploratory tests see PARA 563 ante.

3 For the meaning of 'remedial operations' see PARA 564 note 8 ante.

4 Mines and Quarries (Tips) Act 1969 s 26(1) (s 26(1), (2) amended by the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 98 note 12 ante.

5 For the meaning of 'disused tip' see PARA 561 note 1 ante. As to stability see PARA 561 note 2 ante.

6 Mines and Quarries (Tips) Act 1969 s 26(2) (as amended: see note 4 supra).

UPDATE

561-583 Prevention of Public Danger from Disused Tips in Mines and Quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/C. PREVENTION OF PUBLIC DANGER FROM DISUSED TIPS IN MINES AND QUARRIES/ (D) Miscellaneous and Supplemental/579. Offences generally.

579. Offences generally.

Proceedings for an offence under the disused tip provisions of the Mines and Quarries (Tips) Act 1969¹ may not be instituted except by a local authority² or by or with the consent of the Director of Public Prosecutions³. Where such an offence committed by a body corporate⁴ is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director⁵, manager, secretary or similar officer of that body, or any person purporting to act in any such capacity, he, as well as the body corporate, is guilty of the offence, and is liable to be proceeded against and punished accordingly⁶.

1 The Mines and Quarries (Tips) Act 1969 Pt II (ss 11-36) (as amended).

2 For the meaning of 'local authority' see PARA 561 note 3 ante.

3 Mines and Quarries (Tips) Act 1969 s 27(1). As to the office and functions of the Director of Public Prosecutions see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 544; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

4 As to the criminal responsibility of corporations see CORPORATIONS vol 9(2) (2006 Reissue) PARAS 1280, 1281.

5 'Director', in relation to a body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate: Mines and Quarries (Tips) Act 1969 s 27(3).

6 Ibid s 27(2).

UPDATE

561-583 Prevention of Public Danger from Disused Tips in Mines and Quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/C. PREVENTION OF PUBLIC DANGER FROM DISUSED TIPS IN MINES AND QUARRIES/ (D) Miscellaneous and Supplemental/580. Service of documents.

580. Service of documents.

Any document required or authorised¹ to be given or served under the disused tip provisions of the Mines and Quarries (Tips) Act 1969² may either be delivered to the person to whom it is to be given or on whom it is to be served, left at his proper address³ or sent to him by post⁴. Any document required or authorised to be given to or served on a body corporate is duly given or served if given to or served on the secretary or clerk of that body⁵.

If the name or address of any owner, lessee or occupier of land to or on whom any document is to be so given or served cannot be ascertained after reasonable inquiry but there is on that land an occupied building, the document may be addressed to the person to or on whom it is to be given or served by the description of 'owner', 'lessee' or 'occupier' of the land (describing it) and either delivering it to some responsible person in the building or sending it by post in a letter similarly addressed⁶.

1 In relation to any document required or authorised by the Mines and Quarries (Tips) Act 1969 Pt II (ss 11-36) (as amended) to be given or served by a local authority, s 30(1)-(4) has effect in place of the Local Government Act 1972 s 233 (as amended) (service of notices by local authority) (see LOCAL GOVERNMENT vol 69 (2009) PARA 576), but does not affect the operation in relation to such a document of s 234 (as amended) (authentication of documents) (see LOCAL GOVERNMENT vol 69 (2009) PARA 574); Mines and Quarries (Tips) Act 1969 s 30(5) (amended by the Local Government Act 1972 s 272(2)); Interpretation Act 1978 s 17(2)(a). For the meaning of 'local authority' see PARA 561 note 3 ante.

2 Ie the Mines and Quarries Act 1969 Pt II (as amended).

3 For the purposes of ibid s 30 (as amended) and the application to it of the Interpretation Act 1978 s 7 (references to service by post), the proper address of any person to or on whom any document is to be given or served is, in the case of the secretary or clerk of a body corporate, that of the registered or principal office of that body, and in any other case is the last known address of the person to be served; but where under agreed arrangements the person to be served has given an address for service in the United Kingdom that is his proper address: Mines and Quarries (Tips) Act 1969 s 30(3) (amended by the Interpretation Act 1978 s 25(2)); Interpretation Act 1978 s 17(2)(a). For the meaning of 'United Kingdom' see PARA 1 note 1 ante.

4 Mines and Quarries (Tips) Act 1969 s 30(1). As to service by post see further the Interpretation Act 1978 s 7; and STATUTES. As to the service of documents in connection with ecclesiastical property see PARA 581 post.

5 Mines and Quarries (Tips) Act 1969 s 30(2).

6 Ibid s 30(4).

UPDATE

561-583 Prevention of Public Danger from Disused Tips in Mines and Quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/C. PREVENTION OF PUBLIC DANGER FROM DISUSED TIPS IN MINES AND QUARRIES/ (D) Miscellaneous and Supplemental/581. Ecclesiastical property.

581. Ecclesiastical property.

No notice requiring remedial operations¹ may be served in respect of a disused tip² if the land on which the tip concerned is situated is ecclesiastical property³, but this does not affect the powers of a local authority⁴ to carry out remedial operations itself⁵.

Where under the disused tip provisions of the Mines and Quarries (Tips) Act 1969⁶ a document is required or authorised to be given to, or served on, any person as occupier of, or owner of an estate or interest in, any land which is ecclesiastical property, a copy must be given to or served on the Church Commissioners⁷.

Any compensation for damage or disturbance⁸ payable to a person by virtue of his having an estate in fee simple in any land must, if the land is ecclesiastical property and the fee simple is vested in any person other than the Church Commissioners, be paid to them instead of to that person⁹.

1 Ie a notice under the Mines and Quarries (Tips) Act 1969 s 14 (as amended) (see PARA 564 ante). For the meaning of 'remedial operations' see PARA 564 note 8 ante.

2 For the meaning of 'disused tip' see PARA 561 note 1 ante.

3 'Ecclesiastical property' means land belonging to an ecclesiastical benefice of the Church of England, or being or forming part of a church subject to the jurisdiction of the bishop of any diocese of the Church of England or the site of such a church, or being or forming part of a burial ground so subject: Mines and Quarries (Tips) Act 1969 s 31(7). 'Benefice' means an ecclesiastical benefice of the Church of England: s 31(7). Where the fee simple of any ecclesiastical property is in abeyance, it is to be treated for the purposes of Pt II (ss 11-36) (as amended) as being vested in the Church Commissioners (s 31(5)(a)); and where by virtue of this provision the Church Commissioners are owners of land belonging to an ecclesiastical benefice and by virtue of such ownership are liable to pay any sum under Pt II (as amended) either as owner of a disused tip or as a contributory, their liability must be met from, and is not to exceed the total of, the sums held by them for that benefice (s 31(5)(b)). For the meaning of 'disused tip' see PARA 561 note 1 ante; and for the meaning of 'contributory' see PARAS 571 note 2, 572 ante. As to the Church Commissioners generally see ECCLESIASTICAL LAW. Where s 31(5) does not apply but a liability to pay any sum under Pt II (as amended) falls on any person, either as owner of a disused tip or as a contributory, by virtue of there being vested in him the fee simple in land belonging to an ecclesiastical benefice, the Church Commissioners may apply any sums held by them for that benefice in discharging the whole or any part of that liability: s 31(6).

4 For the meaning of 'local authority' see PARA 561 note 3 ante.

5 Mines and Quarries (Tips) Act 1969 s 31(1). As to the powers of local authorities to carry out remedial operations see s 17; and PARA 568 ante.

6 Ie under *ibid* Pt II (as amended).

7 *Ibid* s 31(2).

8 As to such compensation see *ibid* s 20; and PARA 570 ante.

9 *Ibid* s 31(3). Any sums so paid to the Church Commissioners with reference to any land must, if the land is not consecrated, be applied by them for the purposes for which the proceeds of a sale by agreement of the fee simple would be applicable under any enactment or Measure authorising such a sale and, if the land is consecrated, be applied by them in such manner as they may determine: s 31(4).

UPDATE

561-583 Prevention of Public Danger from Disused Tips in Mines and Quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

581 Ecclesiastical property

TEXT AND NOTES--1969 Act s 31 amended: Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 16.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/C. PREVENTION OF PUBLIC DANGER FROM DISUSED TIPS IN MINES AND QUARRIES/ (D) Miscellaneous and Supplemental/582. Raising money in special cases.

582. Raising money in special cases.

In particular cases concerning limited owners, university and college estates and the duchies of Lancaster and Cornwall¹ special provisions have effect with respect to the raising of money for the payment of certain types of expenditure, known as 'relevant expenditure'², under the disused tip provisions³ of the Mines and Quarries (Tips) Act 1969⁴.

1 See note 4 infra.

2 'Relevant expenditure' means: (1) expenses incurred in remedial operations in pursuance of a notice under the Mines and Quarries (Tips) Act 1969 s 14 (as amended) requiring such operations (see PARA 564 ante) and in any consequential works of reinstatement (s 32(1)(a)); (2) compensation recoverable under s 20 for damage and disturbance (see PARA 570 ante) and referable to any such remedial operations or works of reinstatement (s 32(1)(b)); and (3) sums recoverable under s 21, s 23 (as amended) or Sch 2 para 6 from contributories (see PARA 573 ante) or by local authorities (see PARA 575 ante) (s 32(1)(c)). For the meaning of 'remedial operations' see PARA 564 note 8 ante; and for the meaning of 'local authority' see PARA 561 note 3 ante.

3 *Ie* *ibid* Pt II (ss 11-36) (as amended).

4 See *ibid* s 32(1). The special provisions are as follows:

205 (1) the purposes authorised for the application of capital money by the Universities and College Estates Act 1925 s 26 (as amended) (see EDUCATION vol 15(2) (2006 Reissue) PARA 1379), include the payment of any relevant expenditure (Mines and Quarries (Tips) Act 1969 s 32(2)(a) (s 32(2)(a), (b) amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(2), Sch 4));

206 (2) the purposes authorised by the Settled Land Act 1925 s 71 (as amended) (see SETTLEMENTS vol 42 (Reissue) PARAS 821, 849, 850), as applied by the Universities and College Estates Act 1925 s 30 (as amended) (see EDUCATION vol 15(2) (2006 Reissue) PARA 1379), as purposes for which money may be raised by mortgage include the payment of any relevant expenditure (Mines and Quarries (Tips) Act 1969 s 32(2)(b) (as so amended));

207 (3) the purposes authorised by the Duchy of Lancaster Act 1817 s 25 (as amended) for the application of money arising by the sale of annuities include the payment of relevant expenditure in relation to property belonging to the Crown in right of the Duchy of Lancaster (Mines and Quarries (Tips) Act 1969 s 32(2)(c); Statute Law (Repeals) Act 1977 s 3, Sch 3 (repealed));

208 (4) the purposes authorised by the Duchy of Cornwall Management Act 1863 s 8 (as amended) for the advancement of parts of gross sums include the payment of relevant expenditure in relation to property belonging to the Crown in right of the Duchy of Cornwall (Mines and Quarries (Tips) Act 1969 s 32(2)(d)).

As to the Duchy of Lancaster and the Duchy of Cornwall see CROWN PROPERTY vol 12(1) (Reissue) PARAS 300 et seq, 318 et seq.

UPDATE

561-583 Prevention of Public Danger from Disused Tips in Mines and Quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/8. REGULATION OF MINES AND QUARRIES IN GENERAL/ (2) STATUTORY REGULATION/(vi) Tips/C. PREVENTION OF PUBLIC DANGER FROM DISUSED TIPS IN MINES AND QUARRIES/ (D) Miscellaneous and Supplemental/583. Regulations.

583. Regulations.

Any power conferred by the disused tip provisions of the Mines and Quarries (Tips) Act 1969¹ to make regulations is exercisable by statutory instrument², which is subject to annulment by resolution of either House of Parliament³.

1 Ie the Mines and Quarries (Tips) Act 1969 Pt II (ss 11-36) (as amended).

2 Ibid s 29(1). The power under s 23(5) (as amended) (see PARA 575 ante) to make an order is also exercisable by statutory instrument (s 29(1)), but such an instrument must be laid before Parliament after being made (s 29(3)), and that power includes power to vary or revoke such an order by a further such order (s 29(4)).

3 Ibid s 29(2).

UPDATE

561-583 Prevention of Public Danger from Disused Tips in Mines and Quarries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/9. IRONSTONE DISTRICT RESTORATION/584. The legislation.

9. IRONSTONE DISTRICT RESTORATION

584. The legislation.

Provision for the restoration of land within the ironstone district¹ which was used for the working of ironstone by opencast operations was made by the Mineral Workings Act 1951² and the Mineral Workings Act 1971³.

The Mineral Workings Act 1985 deals with residual financial arrangements⁴, and arrangements affecting agricultural land⁵ and forestry⁶. There are also provisions conferring powers of entry⁷ and powers to carry out works⁸ on former mining land, which are exercisable in connection with the powers of local authorities to carry out work to reclaim or improve derelict land⁹.

1 'Ironstone' mainly denotes a sedimentary rock containing iron carbonate or iron silicate. 'The ironstone district' is the district comprising the counties of Leicestershire, Northamptonshire, Warwickshire; the county of Lincolnshire other than the districts of Boston and South Holland; the county of Oxfordshire other than so much of it as was immediately before 1 April 1974 comprised in the royal county of Berkshire; in the county of Humberside, the districts of Cleethorpes, Glanford, Grimsby and Scunthorpe and part of the district of Boothferry (ie the parishes of Amcotts, Belton, Crowle, Eastoft, Epworth, Garthorpe, Haxey, Keadby with Althorpe, Luddington, Owston Ferry, West Butterwick and Wroot); and the district of Peterborough other than the parishes of Orton Longueville, Orton Waterville, Stanground North and Thorney: see the Mineral Workings Act 1985 s 9, Sch 1. Note that the former county of Humberside now consists of the county of East Riding of Yorkshire, the city of Kingston upon Hull and the unitary authorities of North Lincolnshire and North East Lincolnshire.

2 The Mineral Workings Act 1951 is mainly repealed: see the Mineral Workings Act 1985 ss 1, 10, Sch 2; and the Planning (Consequential Provisions) Act 1990 s 3, Sch 1 Pt II. Provisions of the Mineral Workings Act 1951 relating to the modification of payments in lieu of restoration under ironstone leases remain in force: see PARA 585 post. The Mineral Workings Act 1951 does not extend to Northern Ireland: s 43(1), (2).

3 The Mineral Workings Act 1971 is repealed by the Mineral Workings Act 1985 s 1, Sch 2.

4 See the Mineral Workings Act 1985 s 3 (as amended), s 6; and FORESTRY vol 52 (2009) PARA 47.

5 See *ibid* s 4.

6 See *ibid* s 5.

7 See *ibid* s 7 (as amended).

8 See *ibid* s 8.

9 *Ie* under the National Parks and Access to the Countryside Act 1949: see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 647.

UPDATE

584 The legislation

TEXT AND NOTE 9--See, in particular, the power under the National Parks and Access to the Countryside Act 1949 s 89; and PARA 584A. A local authority also has power to enter and work on former mining land under the Mineral Workings Act 1985 ss 7 (see PARA 584B) and 8 (see PARA 584C).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/9. IRONSTONE DISTRICT RESTORATION/584A Treatment of derelict land

584A Treatment of derelict land

Where it appears to a local authority¹ that any land² in its area is likely to become derelict, neglected or unsightly by reason of actual or apprehended collapse of the surface as the result of the carrying out of relevant operations³ which have ceased to be carried out, it may carry out, for the purpose of reclaiming or improving that land or of enabling it to be brought into use, such works on that land or any other land as appear to it expedient⁴.

The powers mentioned above may be exercised by an authority either on land belonging to it or with the consent of all persons interested therein on other land; and in relation to such other land these powers include power to make arrangements whereby the work is carried out, on such terms as may be provided under the arrangements, by a person other than the authority⁵. Where a local authority exercises its powers over land not belonging to it, the management of the land, so far as related to anything done by the authority, may be undertaken either by the authority or by the person interested in the land as may be agreed between them and on such terms as may be so agreed⁶.

A local authority may acquire land compulsorily for the purpose of any of these functions⁷.

These provisions apply to Crown land⁸ if the appropriate authority⁹ consents to their application¹⁰.

1 'Local authority', for these purposes, means a local planning authority, a county council not being a local planning authority, or a district council: National Parks and Access to the Countryside Act 1949 s 89(7) (added by the Local Authorities (Land) Act 1963 s 6(4); and amended by the Local Government Act 1972 Sch 17 para 38, Sch 30).

2 'Land' includes land covered by water: National Parks and Access to the Countryside Act 1949 s 114(1).

3 'Relevant operations' means underground mining operations other than operations for the purpose of the working and getting of coal, or of coal and other minerals worked with coal, or for the purpose of getting any product from coal in the course of working and getting coal: National Parks and Access to the Countryside Act 1949 s 89(2) (substituted by the Derelict Land Act 1982 s 3(1)). As to a local authority's power to enter and work on former mining land see the Mineral Workings Act 1985 ss 7, 8; and PARAS 584B, 584C. As to mining generally see PARA 1 et seq.

4 National Parks and Access to the Countryside Act 1949 s 89(2).

5 See the National Parks and Access to the Countryside Act 1949 s 89(3). However, nothing in s 89(1)-(3) authorises the doing of any act in contravention of any enactment: s 89(4) (amended by the Local Authorities (Land) Act 1963 s 6(2); and the Countryside Act 1968 Sch 5).

6 See the National Parks and Access to the Countryside Act 1949 s 89(6) (amended by the Local Authorities (Land) Act 1963 s 6(1)).

7 National Parks and Access to the Countryside Act 1949 s 89(5) (amended by the Local Authorities (Land) Act 1963 s 6(1)). As to compulsory acquisition of land generally see COMPULSORY ACQUISITION OF LAND.

8 As to Crown land generally see CROWN PROPERTY.

9 'The appropriate authority', in relation to any Crown land, means (1) in the case of land belonging to Her Majesty in right of the Crown, the Commissioners of Crown Lands (reconstituted as the Crown Estate Commissioners) (see CROWN PROPERTY vol 12(1) (Reissue) PARA 280 et seq) or other government department having the management of the land in question; (2) in the case of land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy; (3) in the case of land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall or the possessor for the time being of the Duchy of Cornwall appoints; and (4) in the case of land belonging to a government department or held in trust for Her Majesty for the purpose of

a government department, that department: National Parks and Access to the Countryside Act 1949 s 101(11) (a)-(d) (amended by virtue of the Crown Estate Act 1961 s 1; and the Interpretation Act 1978 Sch 1). Questions of doubt as to who is the appropriate authority in a particular case must be determined by the Treasury: National Parks and Access to the Countryside Act 1949 s 101(11).

10 National Parks and Access to the Countryside Act 1949 s 101(7). However, an interest in Crown land may be acquired for the purposes of s 89 only with the consent of the appropriate authority; and if any land affected by the arrangements under s 89(3) or an agreement under s 89(6) becomes Crown land, the arrangements or agreement cease to apply to the land unless the appropriate authority consents to the continued application to it of the arrangements or agreement: s 101(7)(a), (b).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/9. IRONSTONE DISTRICT RESTORATION/584B Power to enter former mining land

584B Power to enter former mining land

The following provisions apply where a local authority has carried out, is carrying out or is considering whether to carry out works¹ on any land for the purpose of (1) reclaiming or improving land under which relevant operations² have been, but are no longer being, carried out; or (2) enabling it to be brought into use³.

A person duly authorised in writing by the authority may at any reasonable time enter such land⁴ in order to (a) carry out the works referred to; (b) survey the land for the purpose of ascertaining the effect on it of the works; (c) survey the land for the purpose of ascertaining the location, extent and state of mine workings produced by relevant operations, the state of the land, the risk of collapse of its surface, the likely extent of collapse, and the nature and extent of any works which may be necessary to prevent collapse or to deal with a collapse which has occurred⁵.

A person may not demand admission to any land as of right unless at least ten clear days' notice⁶ in writing of the intended entry has been given to every person who is an owner⁷ or occupier, or the entry is authorised by a warrant⁸. A person duly authorised to enter any land must, if so required, produce evidence of his authority before so entering and may take with him on to the land such other persons and such equipment as may be necessary⁹.

Any person who intentionally obstructs a person entitled to enter land is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale¹⁰.

Where, in consequence of an exercise of the power to enter land, any damage is caused to land or chattels, or any loss occurs to chattels, the local authority authorising the entry must pay compensation in respect of the damage or loss to every person interested in the land or chattels¹¹. Where, in consequence of an exercise of such power, any person is disturbed in his enjoyment of land or chattels, the local authority authorising the entry must pay compensation in respect of the disturbance to that person¹².

1 le works under the National Parks and Access to the Countryside Act 1949 s 89(2) (see PARA 584A): see the Mineral Workings Act 1985 s 7(1).

2 For the meaning of 'relevant operations' see PARA 584A NOTE 3 (definition applied by Mineral Workings Act 1985 s 7(2)).

3 Mineral Workings Act 1985 s 7(1).

4 le the land first mentioned in the Mineral Workings Act 1985 s 7(1): see s 7(3).

5 Mineral Workings Act 1985 s 7(3). The power to survey land includes power to search and bore for the purpose of ascertaining the nature of its subsoil: s 7(4).

6 Such notice must specify the purpose for which entry is required and, in a case where entry is sought for the purpose of carrying out works, must indicate as far as is practicable the nature of the intended works: Mineral Workings Act 1985 s 7(6).

7 'Owner', in relation to any land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion, and also includes a person holding, or entitled to the rents and profits of, the land under a lease or agreement: Mineral Workings Act 1985 s 7(14).

8 Mineral Workings Act 1985 s 7(5). If it is shown to the satisfaction of a justice of the peace on sworn information in writing (1) that a person entitled to enter land under s 7 is not or will not be able to gain

admission to the land, or that any owner or occupier who has not been given notice under s 7(5) is one who has not been identified or (though identified) has not been traced after reasonable inquiry by the authority; and (2) that there is reasonable ground for entering the land for the purpose for which entry is required, the justice may by warrant under his hand authorise that person to enter the land, if need be by force: s 7(7). However, such a warrant must not be granted on the ground that a person is not or will not be able to gain admission unless the justice is satisfied that the authority has taken reasonable steps to notify every person who is an owner or occupier of the intention to apply for a warrant: s 7(7). Every warrant granted under s 7 continues in force until the purpose for which entry is required has been satisfied: s 7(8).

9 Mineral Workings Act 1985 s 7(9).

10 Mineral Workings Act 1985 s 7(10) (amended by the Statute Law (Repeals) Act 1993). As to the standard scale see PARA 98 NOTE 12.

11 Mineral Workings Act 1985 s 7(11). Any dispute about a right to compensation or about its amount must be referred to and determined by the Upper Tribunal; and the Land Compensation Act 1961 s 4 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 716, 717) applies in relation to the determination of any such dispute: Mineral Workings Act 1985 s 7(13) (amended by SI 2009/1307).

12 Mineral Workings Act 1985 s 7(12). See also s 7(13); and NOTE 11.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/9. IRONSTONE DISTRICT RESTORATION/584C Works on former mining land

584C Works on former mining land

The following provisions apply where a local authority¹ proposes to carry out works on any land for the purposes of (1) reclaiming or improving land under which relevant operations² have been, but are no longer being, carried out; or (2) enabling it to be brought into use³.

If the following conditions are fulfilled, the authority may carry out the works without the consent of persons interested in the land⁴, notwithstanding the provision⁵ requiring such consent⁶. The conditions are that (a) in the authority's opinion the surface of the land under which the relevant operations have been carried out has collapsed or is in imminent danger of collapse; (b) in the authority's opinion the works are necessary as a matter of urgency because in its opinion there is, or is likely to be, a risk of death or injury to persons or damage to other land or property; and (c) any person who has not given his required consent⁷ has, in the authority's opinion, withheld consent unreasonably or has not been identified or (though identified) has not been traced after reasonable inquiry by the authority⁸.

The authority must not carry out the works⁹ without the consent of interested persons unless it gives notice that it proposes to do so to any person who, after reasonable inquiry by the authority, appears to it to be interested in the land on which it proposes to carry out the works and has been traced¹⁰. Where such a notice has been given, a person interested in the land may (whether or not he has been given such notice) apply to the Secretary of State (not less than ten clear days before the date stated in the notice as the date when the authority proposes to start the works) for a decision whether or not the works may be carried out without the consent of all persons interested in the land¹¹. When such an application is made, the Secretary of State must notify the authority as soon as practicable, and the works¹² must not be carried out without the consent of persons interested in the land unless he indicates that he has decided that they may be so carried out¹³.

Where in consequence of the carrying out of works¹⁴ without the consent of persons interested in the land any damage is caused to land or chattels, or any depreciation in the value of an interest in land occurs, or any loss occurs in relation to chattels, the authority must pay compensation in respect of the damage, depreciation or loss to every person interested in the land¹⁵. Where in consequence of the carrying out of such works any person is disturbed in his enjoyment of land or chattels, the authority must pay compensation in respect of the disturbance to that person¹⁶.

¹ I.e. under the National Parks and Access to the Countryside Act s 89(2) (see PARA 584A): see the Mineral Workings Act 1985 s 8(1).

² For the meaning of 'relevant operations' see PARA 584A NOTE 3 (definition applied by the Mineral Workings Act 1985 s 8(1)).

³ Mineral Workings Act 1985 s 8(1).

⁴ I.e. the land first mentioned in Mineral Workings Act 1985 s 8(1): see s 8(2).

⁵ I.e. the National Parks and Access to the Countryside Act 1949 s 89(3) (see PARA 584A): see the Mineral Workings Act 1985 s 8(2).

⁶ Mineral Workings Act 1985 s 8(2).

⁷ I.e. required by National Parks and Access to the Countryside Act 1949 s 89(3): see the Mineral Workings Act 1985 s 8(3).

8 Mineral Workings Act 1985 s 8(3).

9 le the works as mentioned in Mineral Workings Act 1985 s 8(2).

10 Mineral Workings Act 1985 s 8(4). A notice under s 8(4) must state when the authority proposes to start the works and must contain such other information, be in such form, and be given in such manner and at such time before it is proposed to start the works, as may be prescribed by regulations made by the Secretary of State: s 8(5), (12), (13); and see the Mining Dereliction (Compulsory Works) (Procedure) Regulations 1985, SI 1985/814. As to the Secretary of State see PARA 102.

11 Mineral Workings Act 1985 s 8(6). Regulations made by the Secretary of State may prescribe the manner of making applications under s 8(6), the grounds on which they may be made, the procedure for reaching and indicating decisions on them, and such other matters relating to them as the Secretary of State thinks expedient: s 8(8); and see the Mining Dereliction (Compulsory Works) (Procedure) Regulations 1985, SI 1985/814.

12 le the works as mentioned in the Mineral Workings Act 1985 s 8(2): see s 8(7).

13 Mineral Workings Act 1985 s 8(7).

14 le the works as mentioned in Mineral Workings Act 1985 s 8(2): see s 8(9).

15 Mineral Workings Act 1985 s 8(9). Any dispute about a right to compensation or about its amount must be referred to and determined by the Upper Tribunal; and the Land Compensation Act 1961 s 4 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 716, 717) applies in relation to the determination of any such dispute: Mineral Workings Act 1985 s 8(11) (amended by SI 2009/1307).

16 Mineral Workings Act 1985 s 8(10); and see NOTE 15.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/9. IRONSTONE DISTRICT RESTORATION/585. Modification of payments in lieu of restoration under ironstone leases.

585. Modification of payments in lieu of restoration under ironstone leases.

Where any ironstone comprised in a mining lease made before 1 August 1951¹ is worked by opencast operations in accordance with planning permission², then if:

- 252 (1) the lease contains provisions requiring or enabling the lessee to pay a specified sum in lieu of compliance with any obligation relating to the restoration of the land or by way of liquidated damages for breach of such an obligation, or to return the land after restoration or upon payment of a specified sum in lieu of restoration; and
- 253 (2) the planning permission is subject to conditions regulating the manner in which the land is to be dealt with after working, but not requiring its restoration in the manner or to the extent specified in the lease, and those conditions are complied with,

the sum payable by the lessee under the lease in respect of that land must be reduced to such extent, if any, as may be just having regard to any benefit accruing to the lessor, or any person deriving title from him, in consequence of compliance with those conditions³.

Any question whether any and if so what reduction falls to be made under these provisions in the sums payable under a lease must, in default of agreement between the parties, be determined by arbitration⁴.

1 Ile the commencement of the Mineral Workings Act 1951: see s 28(1). These provisions apply in relation to a conveyance of ironstone or a conveyance of land subject to an exception of ironstone as they apply in relation to a mining lease, and as if for references to the lessee and to the lessor there were substituted respectively references to the person entitled to the ironstone by virtue of the conveyance or exception and to the person entitled to the surface of the land: s 28(4). For the meanings of 'land' and of 'lease' for these purposes see the Town and Country Planning Act 1990; and TOWN AND COUNTRY PLANNING (definitions applied by the Mineral Workings Act 1951 s 41 (amended by the Mineral Workings Act 1985 ss 1, 6(4), 10, Sch 2; and the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 2)).

2 For the meaning of 'planning permission' see the Town and Country Planning Act 1990; and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 43 (definition applied by the Mineral Workings Act 1951 s 41 (as amended: see note 1 supra)). As to planning permission generally see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 217 et seq.

3 Ibid s 28(1). For the purpose of calculating the amount of any reduction, the value of any benefit accruing in consequence of compliance with any conditions must be ascertained by reference to prices of land current at the time when the sum to be reduced is payable; but if that sum is less than the sum which would represent the value of the land at that time if it were restored to the extent contemplated in the lease, the value of the benefit must be reduced proportionately: s 28(3).

4 Ibid s 28(2). As to arbitration generally see ARBITRATION vol 2 (2008) PARA 1201 et seq.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(1) IN GENERAL/586. Manorial land.

10. LOCAL RIGHTS AND CUSTOMS

(1) IN GENERAL

586. Manorial land.

Apart from the Forest of Dean and certain other mining districts¹, customary rights of working are mainly of importance in connection with manorial land². If either lord or tenant is entitled to work mines³ or quarries⁴ in former copyhold land⁵ or in former customary freehold land⁶, it is by virtue of a special custom⁷. The tenant may only work mines or quarries in the waste if so entitled by custom, and the right of the lord of a manor to work mines or quarries in the waste may be varied by custom from that which he would enjoy under the general law⁸. If either lord⁹ or tenant¹⁰ exceeds his rights he may be restrained by injunction¹¹.

The customary right of a tenant to dig mines in his copyhold could be enjoyed without stint¹², but a custom to dig without stint in the waste is bad¹³.

1 As to customary rights in these districts see PARAS 588 et seq, 591 et seq, 608 et seq post.

2 See CUSTOM AND USAGE.

3 For the meaning of 'mine' see PARA 5 ante.

4 For the meaning of 'quarry' see PARA 6 ante.

5 As to rights to work coal in former copyhold land see PARA 400 ante. As to the abolition of copyhold tenure and the enfranchisement of copyhold land see CUSTOM AND USAGE vol 12(1) (Reissue) PARA 710 et seq; REAL PROPERTY vol 39(2) (Reissue) PARA 31 et seq.

6 See eg *Duke of Portland v Hill* (1866) LR 2 Eq 765.

7 See CUSTOM AND USAGE vol 12(1) (Reissue) PARA 642 et seq.

8 See COMMONS vol 13 (2009) PARA 562; CUSTOM AND USAGE.

9 *Place v Jackson* (1824) 4 Dow & Ry KB 318.

10 *Dean and Chapter of Ely v Warren* (1741) 2 Atk 189 at 190 per Lord Hardwicke LC.

11 As to injunctions generally see CIVIL PROCEDURE vol 11 (2009) PARA 331 et seq.

12 *Marquis of Salisbury v Gladstone* (1861) 9 HL Cas 692.

13 *Lady Wilson v Willes* (1806) 7 East 121.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(1) IN GENERAL/587. Proof of custom.

587. Proof of custom.

Customary rights in respect of minerals¹ are proved in the same manner as other customary rights². Evidence of a custom in one manor cannot be given to establish the existence of a similar custom in another manor³, except possibly in the case of manors whose physical characteristics are similar, such as manors situate in the fen country or in mining districts⁴. Evidence of a custom to commit one sort of waste, such as cutting trees, is not evidence of a custom to commit another sort of waste, such as digging mines⁵, although a custom to dig one sort of mineral may be evidence of a right to dig another⁶.

1 For the meaning of 'minerals' see PARA 12 ante.

2 See CUSTOM AND USAGE.

3 *Marquis of Anglesey v Lord Hatherton* (1842) 10 M & W 218.

4 *Dean and Chapter of Ely v Warren* (1741) 2 Atk 189. See also *Marquis of Anglesey v Lord Hatherton* (1842) 10 M & W 218 at 237 per Lord Abinger CB (discussing exceptions to the general rule).

5 *Bishop of Winchester v Knight* (1717) 1 P Wms 406 at 407 per Lord Cowper LC; *Parrott v Palmer* (1834) 3 My & K 632 at 637 per Lord Brougham LC. For the meaning of 'mine' see PARA 5 ante.

6 *Bishop of Winchester v Knight* (1717) 1 P Wms 406 at 407 per Lord Cowper LC.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(2) TIN BOUNDING IN CORNWALL AND DEVON/(i) Cornwall/588. Tin mining in Cornwall.

(2) TIN BOUNDING IN CORNWALL AND DEVON

(i) Cornwall

588. Tin mining in Cornwall.

Tin was worked in Cornwall from ancient times. Those engaged in tin mining¹ developed a body of stannary customs² which were regulated by their Convocation³, and enforced by their own court⁴. There were also statutory provisions relating to the stannaries⁵, but these have largely been repealed as no working tin mines now remain in Cornwall.

1 Originally, mining companies subject to the stannaries jurisdiction were unincorporated cost-book companies with unlimited liability. By 1920 all the cost-book companies had disappeared, having been either dissolved or converted into registered companies. Provisions in the Companies Act 1948 relating to such companies have been repealed as obsolete: see the Companies Consolidation (Consequential Provisions) Act 1985 ss 28, 29, Sch 1. The Stannaries Act 1869 and the Stannaries Act 1887 (both Acts now repealed) contained provisions as to the regulation of mining companies in the stannaries.

2 The customs were recognised in a Charter, 33 Edw I, which was granted to the tinners of Cornwall in 1305. A copy of the Charter appears in Pearce *The Laws and Customs of the Stannaries* (1725) (see note 3 infra); and see also *Vice v Thomas* (1842) Smirke's Report 1.

3 The Convocation last met in 1753. It appears that on occasion the Convocation made new laws, as well as affirming old customs: *Rogers v Brenton* (1847) 10 QB 26 at 31.

Legislation passed by the Convocation and giving effect to the Cornwall mining customs is contained in Pearce *The Laws and Customs of the Stannaries* (1725) Pt I; and in *The Laws of the Stannaries of Cornwall*, an anonymous collection published by order of the Convocation in Truro in 1752 which has also appeared in a second edition, cited in this title as *Laws of the Stannaries* (2nd Edn, 1824).

4 See PARA 590 post.

5 See eg the Stannaries Act 1836; the Stannaries Act 1855; the Stannaries Act 1869; the Stannaries Act 1887; and the Stannaries Court (Abolition) Act 1896. These Acts are largely repealed, although certain provisions of the Stannaries Act 1836 and the Stannaries Act 1855 relating to the former stannaries jurisdiction continue to have effect: see PARA 590 post; and COURTS vol 10 (Reissue) PARA 707.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(2) TIN BOUNDING IN CORNWALL AND DEVON/(i) Cornwall/589. The custom of tin bounding.

589. The custom of tin bounding.

The ownership of a mine¹ is vested prima facie in the owner of the freehold². This right of ownership is, however, modified by the custom of tin bounding. The custom has fallen into disuse, but it has never been abrogated. Under the custom, if a tin mine³ lay within waste land or certain inclosed land⁴ and was not worked by the surface owner, a tinner⁵ could claim and, if various conditions were met⁶, be granted tin bounds⁷. The grant carried the exclusive right to search for and work all tin and tin ore within the bounds, subject to a payment to the owner of the soil⁸.

Laws passed by the Convocation⁹ included detailed provisions as to the rights, duties and liabilities of tin bounders¹⁰.

1 For the meaning of 'mine' see PARA 5 ante.

2 *Rogers v Brenton* (1847) 10 QB 26 at 50 per Lord Denman CJ; and see PARA 20 ante. As to royal mines see CROWN PROPERTY vol 12(1) (Reissue) PARA 218 et seq.

3 The custom applied only to tin. The tinner was not entitled to other minerals found in the course of working: *Rogers v Brenton* (1847) 10 QB 26 at 56 per Lord Denman CJ. As to customs generally see CUSTOM AND USAGE. For the meaning of 'minerals' see PARA 12 ante.

4 Ie inclosed land in which the custom was exercised before inclosure and which either was the property of an individual or formed part of any of the 17 assessionable manors: *Laws of the Stannaries* (2nd Edn, 1824) p 34. As to the assessionable manors see CROWN PROPERTY vol 12(1) (Reissue) PARAS 225-226.

5 Ie a person employing himself in tin mining: *Rogers v Brenton* (1847) 10 QB 26 at 50 per Lord Denman CJ; and see *Laws of the Stannaries* (2nd Edn, 1824) p 35.

6 As to the conditions see *Laws of the Stannaries* (2nd Edn, 1824) pp 56, 94.

7 *Rogers v Brenton* (1847) 10 QB 26; *Ivimey v Stocker* (1865) 2 Drew & Sm 537 at 542 per Kindersley V-C (revsd on other points (1866) 1 Ch App 396); *Rowe v Brenton* (1828) 8 B & C 737, reported at length in Concanen's Report 1; and see *Vice v Thomas* (1842) 4 Y & C Ex 538, reported at length in Smirke's Report 1.

8 *Laws of the Stannaries* (2nd Edn, 1824) p 34. In the absence of any special custom, the payment was one-fifteenth of the mineral worked: *Laws of the Stannaries* (2nd Edn, 1824) p 34. For an example of a special custom to render a share other than one-fifteenth see *Rowe v Brenton* (1828) 8 B & C 737 at 755 per Parke J. The lord was liable to be rated in respect of his share: see eg *Crease v Sawle* (1842) 2 QB 862. It was held that a tinner was not exempt from paying rates by reason of a claim under the tinner's charters to exemption from taxes: *Trull v Restormel Borough Council* [1994] RVR 122.

9 See PARA 588 ante.

10 See eg *Laws of the Stannaries* (2nd Edn, 1824) p 20 (omission to renew bounds), p 57 (marking and renewal of bounds), pp 59-60 (rights of co-adventurers), pp 91-92 (neglect to work), p 104 (rights as to water) and pp 105-106 (obstruction of streams). A tin bounder was required to work bona fide, but not necessarily without intermission: *Rogers v Brenton* (1847) 10 QB 26.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(2) TIN BOUNDING IN CORNWALL AND DEVON/(i) Cornwall/590. The Stannaries Court.

590. The Stannaries Court.

The court of the Cornish tin miners, known as the Stannaries Court¹, had jurisdiction both at common law and in equity². The court has ceased to exist and the jurisdiction is now exercisable by the county courts of Cornwall³.

1 The full name of the court was the Court of the Vice-Warden of the Stannaries: see the Stannaries Court (Abolition) Act 1896 s 1(1) (as amended); and COURTS vol 10 (Reissue) PARA 707.

2 The jurisdiction extended to: (1) actions between miners (except in relation to land or where judgment of life or limb was exacted), whether or not the cause of the action arose out of the working of mines within the stannaries; and (2) actions between miners and strangers, but only in relation to matters arising out of mining within the stannaries, unless the stranger consented and submitted to the jurisdiction: see the Charter, 33 Edw I, which was granted to the tinners of Cornwall in 1305 (see PARA 588 note 2 ante). See also *R v East Powder Justices, ex p Lampshire* [1979] QB 616 at 625, [1979] 2 All ER 329 at 334, DC, per Robert Goff J. The former criminal jurisdiction of the Stannaries Court had been in abeyance for several centuries, and did not survive the abolition of the court and the transfer of its civil jurisdiction to the county courts of Cornwall (see the text and note 3 infra): *R v East Powder Justices, ex p Lampshire* supra at 625-626 and 334-335, DC, per Robert Goff J. See also *Trull v Restormel Borough Council* [1994] RVR 122. For the meaning of 'mine' see PARA 5 ante.

3 See the Stannaries Court (Abolition) Act 1896 s 1 (as amended); the Order dated 16 December 1896, SR & O 1896/1106; and COURTS vol 10 (Reissue) PARA 707.

UPDATE

590 The Stannaries Court

NOTES 1, 3--Stannaries Court (Abolition) Act 1896 s 1 further amended: Constitutional Reform Act 2005 Sch 4 para 17.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(2) TIN BOUNDING IN CORNWALL AND DEVON/(ii) Devon/591. Tin mining in Devon.

(ii) Devon

591. Tin mining in Devon.

Tin was worked in Devon from early times, but generally on a small scale. As in Cornwall, there developed a body of stannary customs¹ with a Convocation to regulate them². The jurisdiction of the former Stannaries Court was extended to Devon by statute³.

1 The Devon customs were recognised in 1305 in a Charter, 33 Edw I, in terms similar to those applicable to the tinners of Cornwall (see PARA 588 note 2 ante). The text of the Devon Charter is contained in Pearce *The Laws and Customs of the Stannaries* (1725).

2 The last recorded session of the Devon Convocation was in 1703. Legislation giving effect to the Devon mining customs is set out in Pearce *The Laws and Customs of the Stannaries* (1725) Pt II.

3 Stannaries Act 1855 s 32 (repealed); and see the Stannaries Act 1869 s 2 (repealed). As to the Stannaries Court, and its abolition, see PARA 590 ante; and COURTS vol 10 (Reissue) PARA 707.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(2) TIN BOUNDING IN CORNWALL AND DEVON/(ii) Devon/592. The custom of tin bounding in Devon.

592. The custom of tin bounding in Devon.

The custom of tin bounding in Devon was generally similar to that in Cornwall¹. It fell into disuse in the eighteenth century but has not been abrogated. Under the Devon custom a tinner could work tin existing in any land in the county other than meadows, orchards, gardens, houses or grain or corn land, or certain woods or groves². He could also work tin in the excepted lands with the consent of the owner and occupier; and if such consent was given, the owner and occupier were entitled to a share of the produce³. Tin bounds were required to be renewed yearly⁴.

1 As to the custom in Cornwall see PARA 589 ante. As to customs generally see CUSTOM AND USAGE.

2 Pearce *The Laws and Customs of the Stannaries* (1725) p 248. The woods and groves referred to were those where the working would necessitate the overthrowing of 20 timber trees of 20 years' growth: Pearce *The Laws and Customs of the Stannaries* (1725) p 248.

3 Pearce *The Laws and Customs of the Stannaries* (1725) p 249.

4 See Pearce *The Laws and Customs of the Stannaries* (1725) p 200.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(3) LEAD MINING IN DERBYSHIRE/(i) In general/593. Districts.

(3) LEAD MINING IN DERBYSHIRE

(i) In general

593. Districts.

In Derbyshire lead is principally found in two districts, the Hundred of High Peak, in which there is a district called the King's Field or King's Fee, comprising seven liberties or districts¹, and an adjoining district, the Wapentake of Wirksworth, also comprising a district called the King's Field, with eight manors or liberties².

Mining operations specifically directed at lead appear to be at an end in Derbyshire, but some lead ore can be recovered in the course of working other minerals³.

1 Ie Castleton, Bradwell, Hucklow, Winster, Monyash, Taddington and Upper Haddon: see the High Peak Mining Customs and Mineral Courts Act 1851, preamble.

2 Ie Crich, Ashford, Stoney Middleton and Eyam, Hartington, Litton, Peak Forest, Tideswell and Youldgreave: see the Derbyshire Mining Customs and Mineral Courts Act 1852, preamble.

3 Eg minerals such as fluorspar, barite and calcite. For the meaning of 'minerals' see PARA 12 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(3) LEAD MINING IN DERBYSHIRE/(i) In general/594. Ownership of property.

594. Ownership of property.

The King's Field was originally Crown property in the right of the Duchy of Lancaster¹, and with other districts was from time immemorial subject to customs by which any subject of the realm was entitled to search and mine for lead on payment of certain mineral duties².

Notwithstanding the apparent ending of mining for lead³, the customs have not been abrogated.

According to the districts in which the mines⁴ are situated, the mineral duties belong to the Crown, its lessees or private owners⁵. The land enclosing the mines belongs to private persons, the grants of the soil operating subject to the customary duties and rights⁶.

1 As to the Duchy of Lancaster generally see CROWN PROPERTY vol 12(1) (Reissue) PARA 300 et seq.

2 See the High Peak Mining Customs and Mineral Courts Act 1851, preamble; and the Derbyshire Mining Customs and Mineral Courts Act 1852, preamble. See also *Wake v Redfearn* (1880) 43 LT 123, DC. As to mineral duties see PARA 607 post. For the meaning of 'minerals' see PARA 12 ante. As to customs generally see CUSTOM AND USAGE.

3 See PARA 593 ante.

4 For the meaning of 'mine' see PARA 5 ante.

5 See the High Peak Mining Customs and Mineral Courts Act 1851, preamble; and the Derbyshire Mining Customs and Mineral Courts Act 1852, preamble. See also *Wake v Hall* (1883) 8 App Cas 195 at 211, HL, per Lord FitzGerald.

6 See the High Peak Mining Customs and Mineral Courts Act 1851, preamble; and the Derbyshire Mining Customs and Mineral Courts Act 1852, preamble. See also *Wake v Hall* (1883) 8 App Cas 195 at 211, HL, per Lord FitzGerald.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(3) LEAD MINING IN DERBYSHIRE/(i) In general/595. Source and proof of custom.

595. Source and proof of custom.

The mineral laws and customs are defined and regulated by statute¹ and special courts called the Barmote Courts exist to administer them².

To prove a custom with respect to rights of miners in one manor in Derbyshire, evidence of customs in an adjoining manor is admissible³. The rights and customs exercisable by the miners are of an onerous character with regard to the landowners and must be construed strictly⁴.

1 The High Peak Mining Customs and Mineral Courts Act 1851 defines the customs in the King's Field and other parts of the High Peak, while the Derbyshire Mining Customs and Mineral Courts Act 1852 defines the customs in the Wapentake of Wirksworth and eight manors. As to the districts concerned see PARA 593 ante. New customs and rules were defined in 1859 under the power in the High Peak Mining Customs and Mineral Courts Act 1851 s 56: see PARA 596 note 13 post. The objects of the Acts of 1851 and 1852 are substantially the same, namely, settling the customs of each district and establishing and regulating the jurisdiction of the local courts, but each district has its independent local customs and rights and its distinct courts, juries and officers: see *Wake v Redfearn* (1880) 43 LT 123 at 125, DC, per Cockburn CJ. For cases on customs decided before the passing of these Acts see *Beresford v Bacon* (1685) 2 Lut 1317; *Linn-Regis Corp'n v Taylor* (1684) 3 Lev 160; *Rowls v Gells* (1776) 2 Cowp 451; *A-G v Wall* (1760) 4 Bro Parl Cas 665.

2 See PARAS 596-597 post.

3 *Dean and Chapter of Ely v Warren* (1741) 2 Atk 189; *Marquis of Anglesey v Lord Hatherton* (1842) 10 M & W 218 at 237 per Lord Abinger CB; and see *Rowe v Brenton* (1828) 8 B & C 737 at 758 per Parke J. See also PARA 587 ante.

4 *Wake v Redfearn* (1880) 43 LT 123 at 126, DC, per Cockburn CJ.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(3) LEAD MINING IN DERBYSHIRE/(i) In general/596. The Barmote Courts of High Peak.

596. The Barmote Courts of High Peak.

The Great Barmote¹ Courts and the Small Barmote Courts of High Peak are ancient courts² with jurisdiction relating to mining rights and civil pleas relating to those rights in the liberties of the King's Field³ and other parts of the Hundred of High Peak in Derbyshire where Her Majesty is entitled to mineral duties⁴.

The courts are regulated by statute⁵, and are courts of record⁶. The judge is the steward (who is appointed by the Crown⁷) or the deputy steward⁸. The officers of the courts are the barmaster and deputy barmasters⁹; and there is also a grand jury¹⁰. Two Great Barmote Courts are directed to be held at Monyash during the year, and Small Barmote Courts at places fixed by the steward as may be required¹¹. There is detailed provision as to the jurisdiction of the courts¹².

There is a power to make new rules and customs, with the approval of the Chancellor of the Duchy of Lancaster, for the regulation of the working and carrying on of the mines within the district, for the guidance and protection of the mines, for regulating the practice and proceedings of the Great and Small Barmote Courts and of views and other proceedings, and for the execution of any process of these courts¹³.

The procedure as to the grant of new trials, setting aside judgments, and stay of proceedings is similar to that of the High Court, and the issue of subpoenas (which may be served in any part of England), execution and other procedural matters are regulated by statute¹⁴.

1 Barmote is derived from 'bargh mote'. 'Bargh' is 'a mine whereout of metalls are digged': Robertson *Phraseologie Generalis* (1693) p 207. The privileges of the miners in High Peak are defined and regulated by statute: see PARA 595 ante. For the meaning of 'mine' see PARA 5 ante.

2 The future of the Barmote Courts of High Peak, and also of the Barmote Courts of Wirksworth and adjacent liberties, has been discussed by the Law Commission: see *Jurisdiction of Certain Ancient Courts* (Law Com no 72) (1976). The Law Commission recommended the abolition of various obsolete courts; but on the principle that jurisdictions which were not obsolete should be preserved, the recommendations did not include any of the Barmote Courts.

3 As to these liberties see PARA 593 note 1 ante.

4 As to mineral duties see PARA 607 post. For the meaning of 'minerals' see PARA 12 ante.

5 Ie the High Peak Mining Customs and Mineral Courts Act 1851.

6 See *ibid* s 15.

7 Ie under the seal of the Duchy of Lancaster: see *ibid* s 3. The steward must be a barrister of five years' standing or a solicitor of seven years' standing: see s 3. As to the seal of the Duchy of Lancaster see CROWN PROPERTY vol 12(1) (Reissue) PARA 303.

8 See *ibid* ss 3-5, 15.

9 See *ibid* ss 9-12. The barmasters and deputy barmasters have various administrative functions: see eg ss 13, 14, 25, Sch 1 arts 3-5, 7-10, 19. See also PARA 601 et seq post.

10 See note 12 *infra*.

11 See the High Peak Mining Customs and Mineral Courts Act 1851 s 6.

12 The principal statutory business of the Great Barmote Court is the swearing in of a grand jury: see *ibid* s 7. The jurisdiction of the Small Barmote Courts includes actions of title, trespass and debt: see ss 7, 16, Sch 1. It extends to a person who, although mining for a mineral other than lead ore, and therefore not *ipso facto* a miner under the High Peak Mining Customs and Mineral Courts Act 1851, nevertheless in the course of such mining in fact takes lead ore: *R v Sanders* [1917] 2 KB 390, DC; and see PARA 593 text and note 3 ante.

Provision is made as to the procedure for initiating actions: see the High Peak Mining Customs and Mineral Courts Act 1851 ss 24, 25, 51. Actions are tried summarily, leaving questions of fact to be determined by the jury; and the judgment is enforceable by warrant: see s 24. The jurisdiction is not exclusive: see s 55. Causes may be removed by quashing order on judicial review: see ss 29, 52. As to quashing orders (previously *certiorari*) see JUDICIAL REVIEW vol 61 (2010) PARA 693 et seq.

13 See *ibid* s 56. These rules and customs were given effect by an order of the Chancellor of the Duchy of Lancaster dated 30 May 1859 approving the customs, articles, rules and orders made on 5 April 1859 by the steward and grand jury at a Great Barmote Court. The order is printed in SR & O Rev 1948 vol X p 1005. As to the Chancellor of the Duchy of Lancaster see CROWN PROPERTY vol 12(1) (Reissue) PARAS 300, 303.

14 See the High Peak Mining Customs and Mineral Courts Act 1851 ss 27, 31-33.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(3) LEAD MINING IN DERBYSHIRE/(i) In general/597. The Barmote Courts of Wirksworth and adjacent liberties.

597. The Barmote Courts of Wirksworth and adjacent liberties.

The Barmote Courts of Wirksworth and adjacent liberties are similar to those of High Peak¹. They also are regulated by statute², and are courts of record³. The jurisdiction over the King's Field in the Wapentake of Wirksworth is vested in the Wirksworth Barmote Court, and separate courts exist for five adjacent manors or liberties in private ownership⁴. The steward for the Wirksworth Barmote Court is appointed by the Crown⁵ and the stewards for the private liberties are appointed by the persons entitled to the first estate of freehold in the mineral duties payable in the appropriate liberty⁶. Provisions as to the qualification of stewards⁷ and as to jurisdiction and procedure⁸ and quashing orders⁹ are similar to those in the case of the Barmote Courts of High Peak¹⁰. There are certain rules and customs¹¹, but there is no power to formulate new rules and customs.

1 See PARA 596 ante. As to the continued existence of the Barmote Courts see PARA 596 note 2 ante.

2 Ie the Derbyshire Mining Customs and Mineral Courts Act 1852.

3 See *ibid* s 24.

4 Ie (1) Ashford, Hartington, Peak Forest and Tideswell; (2) Crich; (3) Stoney Middleton and Eyam; (4) Youghreave; and (5) Litton.

5 Ie under the seal of the Duchy of Lancaster: see the Derbyshire Mining Customs and Mineral Courts Act 1852 s 3. As to the seal of the Duchy of Lancaster see CROWN PROPERTY vol 12(1) (Reissue) PARA 303.

6 See *ibid* ss 3, 4. In default the Chancellor of the Duchy of Lancaster may appoint them: see s 8. As to mineral duties see PARA 607 post. As to the person entitled to the mineral duties see PARA 594 ante. For the meaning of 'minerals' see PARA 12 ante. As to the Chancellor of the Duchy of Lancaster see CROWN PROPERTY vol 12(1) (Reissue) PARA 300 et seq.

7 See *ibid* ss 3, 4.

8 See *ibid* s 16.

9 See *ibid* ss 38, 60. As to quashing orders (formerly certiorari) see JUDICIAL REVIEW vol 61 (2010) PARA 693 et seq.

10 See PARA 596 ante.

11 Ie those scheduled to the Act regulating the courts: see the Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(3) LEAD MINING IN DERBYSHIRE/(ii) Rights of Mining/598. Right to search for ore.

(ii) Rights of Mining

598. Right to search for ore.

Every subject of the realm¹ may by the local customs enter and search for lead ore in any part of the land where the custom prevails², under the obligation of making good any damage done if no vein of ore is found³.

1 This includes the owner of the soil in which the mine is situate (*Wake v Hall* (1880) 7 QBD 295 at 298, CA, per Lord Selborne LC; affd (1883) 8 App Cas 195, HL) or a lessee from the Crown of mineral rights (*Arkwright v Evans* (1880) 49 LJMC 82 at 86, DC, per Lord Coleridge CJ); but anyone may contract himself out of his customary rights (*Wright v Pitt* (1870) LR 12 Eq 408 at 416 per Malins V-C). A landowner has no greater nor better right to work mines under his land than any other person; and if he works them at all, he can only do so upon the customary terms and on payment of the customary royalties: *Wake v Hall* supra. A person who mines for minerals other than lead ore is not ipso facto a miner within the High Peak Mining Customs and Mineral Courts Act 1851, but he becomes a miner if in fact he takes lead ore: *R v Sanders* [1917] 2 KB 390, DC. For the meaning of 'mine' see PARA 5 ante. For the meaning of 'minerals' see PARA 12 ante. As to customs generally see CUSTOM AND USAGE.

2 Churches, burial grounds, dwelling houses, orchards, gardens and highways are excepted; but, subject to certain conditions and obligations, the miner may also follow a vein or search for lead ore under the excepted places: see the High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 1; and the Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 1. For the meaning of 'vein' see PARA 5 note 17 ante.

3 High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 1; Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 1. See also *Gilbert v Tomison* (1824) 4 Dow & Ry KB 222; *R v Sanders* [1917] 2 KB 390, DC.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(3) LEAD MINING IN DERBYSHIRE/(ii) Rights of Mining/599. Relations between miner and landowner.

599. Relations between miner and landowner.

The rights of landowner and miner are correlative. There is no privity of title between them. The miner is entitled to the use of the land in order to get lead and, while the mine is being worked, to various other easements and rights, but he has no absolute right in perpetuity¹. In the High Peak district, the landowner is entitled to all that remains when the lead has been extracted and to the full property in the land when the mine is abandoned².

1 *Wake v Hall* (1883) 8 App Cas 195 at 206, HL, per Lord Watson, at 209 per Lord Bramwell, and at 214-215 per Lord FitzGerald. For the meaning of 'mine' see PARA 5 ante.

2 High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 2. See also *Wake v Redfearn* (1880) 43 LT 123 at 126, DC, per Cockburn CJ; *Stokes v Arkwright* (1897) 66 LJQB 845; *Duke of Devonshire v Stokes* (1897) 76 LT 424, DC. The customs in the other districts differ slightly: see the Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 2.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(3) LEAD MINING IN DERBYSHIRE/(ii) Rights of Mining/600. Meers.

600. Meers.

In the High Peak district¹, when a person discovers a new vein² he is entitled to two strips of land called 'meers', varying in area according to the district³, along the vein, one on each side of the point where the vein was discovered⁴. A third meer, which the barmaster may set out at either extremity of the two meers, belongs to the owner of the mineral duties⁵.

When the first two meers are freed⁶, the finder may claim the subsequent meers at either extremity⁷. If the third meer is not worked by the owner of the mineral duties, the finder of the original vein may purchase the meer at a price fixed by the steward or barmaster and the grand jury, or may work through it, reserving the ore found there, less expenses, for the owner of the mineral duties⁸.

1 In the other districts the custom varies slightly: see the Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 arts 10, 11, 18. See also *Rowls v Gells* (1776) 2 Cowp 451.

2 For the meaning of 'vein' see PARA 5 note 17 ante.

3 See the High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 18; and the Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 18. Thus a meer in the Peak Forest measures 32 yards, in Wirksworth 29 yards, and in Youlgreave 28 yards.

4 See the High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 arts 10, 11, 18. The point is known as the 'founder': s 2.

5 Ibid Sch 1 art 10. As to mineral duties see PARA 607 post. As to the person entitled to the mineral duties see PARA 594 ante. For the meaning of 'minerals' see PARA 12 ante.

6 As to freeing see PARA 601 post.

7 High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 10; Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 10. Under these provisions the finder is not entitled to more than 50 subsequent meers in each vein.

8 High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 10; Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 10. See also the rules set out in the order of the Chancellor of the Duchy of Lancaster dated 30 May 1859 (see PARA 596 note 13 ante) r 6. See further *Wake v Hall* (1880) 7 QBD 295 at 298, CA, per Lord Selborne LC; affd (1883) 8 App Cas 195, HL.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(3) LEAD MINING IN DERBYSHIRE/(ii) Rights of Mining/601. Setting out meers.

601. Setting out meers.

One of the duties of the barmaster¹ is, in the presence of two of the grand jury, to measure and set out meers², this operation being called the 'gift'³, and to record gifts in the barmaster's book⁴.

A meer may not be set out until ore has been raised and the first customary payment⁵ has been made to the owner of the mineral duties⁶. This is called 'freeing' the mine⁷. Similar payments must be made for every third and subsequent meer reached by the miner⁸. No ore may be sold or disposed of before being measured by a barmaster⁹.

1 As to other duties of the barmaster see eg para 596 note 9 ante.

2 High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 10; Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 10.

3 High Peak Mining Customs and Mineral Courts Act 1851 s 2; Derbyshire Mining Customs and Mineral Courts Act 1852 s 2.

4 High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 10; Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 10.

5 High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 3; Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 3. The payment consists of ore in a dish of a specified measurement: see the High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 3; and the Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 3.

6 High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 11; Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 11. If less than a meer is taken, only a proportionate payment need be made: High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 18; Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 18. As to mineral duties see PARA 607 post. As to the person entitled to the mineral duties see PARA 594 ante. For the meaning of 'minerals' see PARA 12 ante.

7 For the meaning of 'mine' see PARA 5 ante.

8 High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 11; Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 11.

9 High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 8; Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 8.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(3) LEAD MINING IN DERBYSHIRE/(ii) Rights of Mining/602. Forfeiture.

602. Forfeiture.

The penalty for working a mine before it is freed¹, or for committing a trespass² in the third meer³, is forfeiture of the mine to the owner of the mineral duties⁴, enforceable by proceedings in the Small Barmote Court in the name of the barmaster⁵. The non-working of a mine or vein for no sufficient reason is also a cause of forfeiture, upon which it may be given by the barmaster to any person willing to work it⁶.

Where a person has shares in a mine and refuses to join the owners of the other shares in working it, or to pay his proportion of the expenses, he is liable to forfeit his share to the other co-owners⁷.

1 As to freeing see PARA 601 ante. For the meaning of 'mine' see PARA 5 ante.

2 As to trespass see the High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 16; and the Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 16. As to 'views' to ascertain whether a trespass has been committed, and recovery of ore from trespassers, see the High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 arts 22-25, 28; and the Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 arts 23-26, 29. See also the rules set out in the order of the Chancellor of the Duchy of Lancaster dated 30 May 1859 (see PARA 596 note 13 ante) r 11. As to trespass generally see TORT vol 97 (2010) PARA 524 et seq.

3 As to the third meer see PARA 600 ante.

4 As to mineral duties see PARA 607 post. As to the person entitled to the mineral duties see PARA 594 ante. For the meaning of 'minerals' see PARA 12 ante.

5 High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 12; Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 12. As to Small Barmote Courts see *R v Sanders* [1917] 2 KB 390, DC; and PARA 596 ante.

6 High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 19; Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 19. See also the rules set out in the order of the Chancellor of the Duchy of Lancaster dated 30 May 1859 (see PARA 596 note 13 ante) r 7. See further *Wake v Hall* (1880) 7 QBD 295 at 299, CA, per Lord Selborne LC; affd (1883) 8 App Cas 195, HL.

7 High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 20; Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 21. See also the rules set out in the order of the Chancellor of the Duchy of Lancaster dated 30 May 1859 (see PARA 596 note 13 ante) rr 8, 10.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(3) LEAD MINING IN DERBYSHIRE/(ii) Rights of Mining/603. Incidental rights.

603. Incidental rights.

While his mine¹ is being worked, and without paying compensation to the landowner or occupier, the miner is entitled to a right of way (limited to purposes and persons connected with the mine) from the mine to the nearest highway, and also to the nearest stream, spring or natural pond, and to take water from it².

Similarly, without payment of compensation to the landowner or occupier, he is entitled to the exclusive use of such surface land as is thought necessary by the barmaster for the purposes of working the mine³, but he is not entitled to use surface land in one district for mining purposes incidental to mining in another district⁴.

Buildings necessary for the purposes of the mine may be erected on the surface, and modern appliances may be used for working the lead⁵. Buildings and machinery may be removed by the miner or compensation claimed where a mine is forfeited for not being worked⁶. Conversely, a landowner may require a miner, on abandoning his mine, to remove his buildings and restore the surface⁷.

Persons who relieve or unwater a mine are entitled by custom, so long as the relief continues, to such portion of the ore gotten as the barmaster determines, recoverable, according to value, in the High Court or county court⁸.

1 For the meaning of 'mine' see PARA 5 ante.

2 High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 4; Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 4 (under which the right as to water relates only to a running stream, not being ornamental water or a private fishery). These rights must be marked out by the barmaster and two of the grand jury: High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 4; Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 4. See also *Wake v Hall* (1880) 7 QBD 295 at 298, CA, per Lord Selborne LC; affd (1883) 8 App Cas 195, HL.

3 High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 5; Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 5 (under which certain payments must be made for the use of cultivated land).

4 *Wake v Redfearn* (1880) 43 LT 123, DC. It is doubtful whether a miner may use surface land in the same district as that in which he is mining, where it is not immediately over the lead vein actually being worked: *Wake v Redfearn* supra at 127 per Manisty J.

5 High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 5; Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 5. See also *Wake v Hall* (1883) 8 App Cas 195 at 212, HL, per Lord FitzGerald.

6 *Wake v Hall* (1880) 7 QBD 295 at 303, CA, per Lord Selborne LC; affd (1883) 8 App Cas 195, HL. As to forfeiture see PARA 602 ante.

7 *Wake v Hall* (1883) 8 App Cas 195 at 209-210, HL, per Lord Bramwell; cf *A-G to Prince of Wales v Collom* [1916] 2 KB 193.

8 High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 26; Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 27. See also *Arkwright v Gell* (1839) 5 M & W 203 at 228-229 per Lord Abinger CB.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(3) LEAD MINING IN DERBYSHIRE/(ii) Rights of Mining/604. Fences.

604. Fences.

A mine¹ which is being worked must be fenced by the miner², but if the mine has been abandoned the landowner must fence it³.

1 For the meaning of 'mine' see PARA 5 ante.

2 High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 5; Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 5. See also *Sybray v White* (1836) 1 M & W 435.

3 *Arkwright v Evans* (1880) 49 LJMC 82 at 87, DC(CP), per Lord Coleridge CJ; *Duke of Devonshire v Stokes* (1897) 76 LT 424, DC; *Stokes v Arkwright* (1897) 66 LJQB 845. See further PARAS 284, 530 ante; and BOUNDARIES vol 4(1) (2002 Reissue) PARA 947 et seq.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(3) LEAD MINING IN DERBYSHIRE/(ii) Rights of Mining/605. Title to mines.

605. Title to mines.

Gifts from the barmaster¹ are deemed the origin of title, even if the mine was worked prior to the gift². Where priority of title is disputed, the longest continued ownership (which is a question of fact for the jury) prevails³. Questions of title and all disputes arising in the working of mines are determinable in the Small Barmote Court⁴.

1 See PARA 601 ante.

2 For the meaning of 'mine' see PARA 5 ante.

3 High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 15; Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 15. As to the consolidation of titles see the High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 27; and the Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 28.

4 High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 16; Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 16. As to the title to veins which cross or approach one another, but are parted by a 'rither' more than 3 feet or in certain cases 6 feet thick, see the High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 arts 13, 14; and the Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 arts 13, 14. As to the Small Barmote Courts see PARA 596 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(3) LEAD MINING IN DERBYSHIRE/(ii) Rights of Mining/606. Transfer of mines.

606. Transfer of mines.

A simple entry in the barmaster's book is sufficient to effect a transfer of an interest in mines or veins in the High Peak¹. Interests in mines or veins in other districts may be transferred by transferor and transferee executing a transfer in a specified form, but an entry of such transfer must be made in the barmaster's book².

An entry must also be made, in the case of the bankruptcy of any person entitled to a mine or vein in that district, of the appointment of his trustee³, and of the material parts of the probate of a will by which any such mine or vein is devised⁴.

1 High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 6. For the meaning of 'mine' and of 'vein' see PARA 5 note 17 ante.

2 Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 6. See also the rules set out in the order of the Chancellor of the Duchy of Lancaster dated 30 May 1859 (see PARA 596 note 13 ante) r 2.

3 Ibid r 3.

4 Ibid r 4.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(3) LEAD MINING IN DERBYSHIRE/(iii) Mineral Duties/607. Lot and cope.

(iii) Mineral Duties

607. Lot and cope.

The mineral duties payable by the miners to the owners of such duties¹ are 'lot' and 'cope'. Lot is a duty rendered in kind²; cope is a money payment³. The duty of lot is taken by the barmaster when the ore is measured⁴, and payment of cope is recoverable, if necessary, by action in the county court or the Small Barmote Court⁵.

¹ As to the person entitled to the mineral duties see PARA 594 ante. For the meaning of 'minerals' see PARA 12 ante.

² Ie either one-thirteenth or one-ninth part of the ore raised, according to the district: see the High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 9; and the Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 9.

³ The amount of the payment varies according to the district, and is payable for every load of ore measured by the barmaster: see the High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 9; the Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 9; and the Decimal Currency Act 1969 s 10. As to the measurement of loads see the High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 arts 3, 7; and the Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 arts 3, 7.

⁴ High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 9; Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 9. See also *A-G v Wall* (1760) 4 Bro Parl Cas 665.

⁵ High Peak Mining Customs and Mineral Courts Act 1851 Sch 1 art 9; Derbyshire Mining Customs and Mineral Courts Act 1852 Sch 1 art 9. See also *Duke of Devonshire v Stokes* (1897) 76 LT 424 at 425. As to the Small Barmote Courts see PARA 596 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(4) MINING AND QUARRYING IN GLOUCESTERSHIRE/(i) In general/608. Ownership of mines and the surface.

(4) MINING AND QUARRYING IN GLOUCESTERSHIRE

(i) In general

608. Ownership of mines and the surface.

The Gloucestershire customs are exercisable in that part of the county lying to the west of the Severn known as the Hundred of St Briavels¹, which includes the Forest of Dean² and certain other districts³.

The surface of the Forest of Dean, with the exception of certain legalised encroachments⁴, belongs to the Crown⁵, and the surface of the remainder of the hundred belongs partly to the Crown and partly to private owners⁶.

Mines⁷, other than coal mines⁸, in and under the Forest of Dean and the other districts included in the hundred⁹ belong to the Crown¹⁰. Interests in mines in the Forest of Dean and those other districts are subject to the rights of the free miners¹¹ under the customs¹².

¹ See *Fourth Report of the Forest of Dean Commissioners* (1831), which is set out in Wood's Laws of the Dean Forest at 88.

² The boundaries of the Forest of Dean were finally settled by the Delimitation of Forests Act 1640 and the Dean Forest Act 1667 (both repealed). See further *Second Report of the Forest of Dean Commissioners* (1831), which is set out in Wood's Laws of the Dean Forest at 82. For a map see *Report of the Forest of Dean Committee* (Cmnd 686) (1958).

³ In addition to the Forest of Dean, the hundred includes the parishes of Hewelsfield, St Briavels, Newland, Staunton, English Bicknor, Ruardean, Mitcheldean, Abinghall, Flaxley and Little Dean, parts of the parishes of Westbury-on-Severn, Lea and Newnham, the Manor of Rodley, and the district called Hinder's Lane and Dockham: see Wood's Laws of the Dean Forest at 4.

⁴ See Wood's Laws of the Dean Forest at 5-6.

⁵ Dean Forest (Mines) Act 1838, preamble (repealed); Wood's Laws of the Dean Forest at 5-6. See further PARA 610 text and note 2 post.

⁶ Dean Forest (Mines) Act 1838, preamble (repealed); Wood's Laws of the Dean Forest at 7.

⁷ For the meaning of 'mine' see PARA 5 ante.

⁸ As to the privatisation of the coal industry see PARAS 3, 50 et seq ante. See also PARA 610 text and note 2 post.

⁹ It is possible that Noxon Park, Kidnalls and Sneyd Woods and Mailscot may be excepted: see *Fourth Report of the Forest of Dean Commissioners* (1831), which is set out in Wood's Laws of the Dean Forest at 88.

¹⁰ Dean Forest (Mines) Act 1838, preamble (repealed); Wood's Laws of the Dean Forest at 5-7. See also PARA 610 note 2 post.

¹¹ All male persons, born and abiding within the Hundred of St Briavels, of the age of 21 years and upwards, who have worked for a year and a day in a coal or iron mine within the hundred are free miners (see the Dean Forest (Mines) Act 1838 s 14), provided they are registered as such (see s 21; and PARA 610 post). For this purpose, it is sufficient that the mine in which such person worked was an opencast mine; it is not necessary that he should have worked in an underground mine: see *Jones v Piggott* (25 March 1996, unreported), Gloucester Crown Court.

Persons who fulfil similar requirements with regard to stone quarries are also called 'free miners' (see the Dean Forest (Mines) Act 1838 s 15), but their rights are confined to stone quarries (see ss 15, 23). For the meaning of 'quarry' see PARA 6 ante. As to leases of quarries see PARA 621 post.

12 See PARA 609 et seq post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(4) MINING AND QUARRYING IN GLOUCESTERSHIRE/(i) In general/609. Customary rights.

609. Customary rights.

The customs are of immemorial antiquity, but were uncertain and undefined until they were regulated by statute¹ and by certain awards made by Commissioners under statutory powers².

¹ See the Dean Forest Act 1819; the Dean Forest (Mines) Act 1838; the Dean Forest Act 1861; the Dean Forest (Mines) Act 1871; the Dean Forest (Mines) Act 1904; and the Dean Forest Act 1906.

² Three separate awards were made in 1841 by the Dean Forest Mining Commissioners appointed under the Dean Forest (Mines) Act 1838, relating respectively to coal mines, iron mines, and quarries. These awards, which are set out in Wood's Laws of the Dean Forest at 199 et seq, defined the existing gales, and the galees at the time were confirmed in their possessions (see the Dean Forest (Mines) Act 1838 s 27 (amended by the Statute Law (Repeals) Act 1969); and the First Schedule to each of the awards). The Second Schedule to each of these awards contains a series of regulations with regard to the class of undertakings dealt with in the award. An award was made by the Commissioners under the Dean Forest (Mines) Act 1871 modifying and explaining certain clauses in the awards of coal and iron mines made in 1841. This award is set out in Wood's Laws of the Dean Forest at 365. After the making of the awards, the previous customs ceased to be valid except so far as confirmed by the Dean Forest (Mines) Act 1838 or by the awards: s 31 (repealed). For the meaning of 'mine' see PARA 5 ante; for the meaning of 'quarry' see PARA 6 ante; and for the meaning of 'gale' see PARA 611 post.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(4) MINING AND QUARRYING IN GLOUCESTERSHIRE/(i) In general/610. The gaveller and deputy gaveller.

610. The gaveller and deputy gaveller.

The officer who represents the Crown in its dealings with the free miners¹ is known as the gaveller, an office now vested in the Forestry Commissioners². The gaveller or deputy gaveller³ is required to keep a register of free miners⁴; and no one, unless registered, is accounted a free miner⁵.

1 For the meaning of 'free miner' see PARA 608 note 11 ante.

2 The office was formerly vested in the Commissioners of Woods, Forests, Land Revenues, Works and Buildings (subsequently the Commissioners of Crown Lands and now the Crown Estate Commissioners: see CROWN PROPERTY vol 12(1) (Reissue) PARA 280): see the Dean Forest (Mines) Act 1838 s 13 (repealed); and the Crown Lands Act 1851 s 2 (repealed). The estate, interest, rights, powers and liabilities of the Crown and the Commissioners of Crown Lands in the Forest of Dean or as Lord of the Manor of St Briavels, or the Hundred of St Briavels, and certain other manors, or in or in connection with any mines or minerals (other than mines royal) appertaining or reputed to appertain to the lordship of any such manor were transferred to and vested in the Forestry Commissioners by the Forestry (Transfer of Woods) Order 1924, SR & O 1924/386 (as amended): see FORESTRY vol 52 (2009) PARA 1. Thus the office of gaveller vested in the Forestry Commissioners together with all the powers, rights and authorities belonging or appertaining to that office, and all such powers, rights and authorities may be exercised either by the Forestry Commissioners or by the deputy gaveller appointed by them, and any instrument required by any Act to be made by the gaveller may be made under the seal of the Forestry Commissioners: see art 5. As to mines royal see CROWN PROPERTY vol 12(1) (Reissue) PARA 218 et seq.

On 15 June 1945 all land then vested in the Forestry Commissioners vested in the Minister of Agriculture and Fisheries: see the Forestry Act 1945 s 4 (repealed); and FORESTRY vol 52 (2009) PARA 2. The Minister of Agriculture and Fisheries became the Minister of Agriculture, Fisheries and Food (see the Transfer of Functions (Ministry of Food) Order 1955, SI 1955/554), but that ministry has been dissolved and the minister's functions have been transferred to the Secretary of State for Environment, Food and Rural Affairs (see the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794; and PARA 4 note 14 ante). In exercising their functions, the Forestry Commissioners must comply with ministerial directions: see FORESTRY vol 52 (2009) PARA 43. As to the minister's powers of disposal of land vested in him see FORESTRY vol 52 (2009) PARA 44. The minister has specific powers to grant licences for certain mining purposes: see the Dean Forest (Mines) Act 1838 s 65 (amended by the Statute Law (Repeals) Act 1969); and the Dean Forest Act 1861 s 15.

On 1 July 1942 the interest of the Forestry Commissioners in the coal and mines of coal in the Forest of Dean, or other part of the Hundred of St Briavels in respect of which the privileges of free miners were exercisable, vested in the Coal Commission, subject to the provisions of the Dean Forest (Mines) Act 1838 and of any other Dean Forest enactment, and to all interests subsisting or to be created by virtue thereof: Coal Act 1938 s 43(1), (2) (repealed). As to the Coal Commission see PARA 1 ante. The interests in unworked coal and in mines of coal, of colliery concerns (which did not include individuals working coal by virtue of a grant of gales in the Forest of Dean or in any other part of the Hundred of St Briavels: see the Coal Industry Nationalisation Act 1946 s 63(2) (repealed)) and of the Coal Commission were, on 1 January 1947, vested in the National Coal Board, later renamed the British Coal Corporation; and those interests in unworked coal and coal mines have now passed to the Coal Authority: see generally paras 1-3 ante. As to the Coal Authority see PARA 52 et seq ante.

However, all powers conferred by the Dean Forest enactments that were vested in the Forestry Commissioners immediately before 1 July 1942 continued to be exercisable by them; and rent payable to the Commissioners, attributable to the interest transferred, continues to be recoverable by them, but must be paid by them to the Coal Authority, which must pay the Commissioners sums equal to any expenses incurred in the exercise of those powers: see the Coal Act 1938 s 43(6) (repealed with savings); and the Coal Industry Act 1994 s 67(7), Sch 10 para 5.

3 The Forestry Commissioners have power to appoint a deputy gaveller: see the Forestry (Transfer of Woods) Order 1924, SR & O 1924/386, art 5; and note 2 supra. In practice, it is the deputy gaveller who exercises the functions; and references in this title to the gaveller include references to the deputy gaveller.

4 See the Dean Forest (Mines) Act 1838 ss 16, 17 (both amended by the Statute Law (Repeals) Act 1969).

5 See the Dean Forest (Mines) Act 1838 s 21. The gaveller or deputy gaveller may refuse to register any person who does not produce satisfactory evidence of his claim: see s 17 (as amended: see note 4 *supra*). In case of such refusal there is an appeal to the Crown Court within four months of such refusal: see ss 19, 20 (both amended by the Statute Law (Repeals) Act 1969); and the Courts Act 1971 s 56(1), Sch 8. Registration is proved by an extract from the register signed by the gaveller or deputy gaveller: see the Dean Forest (Mines) Act 1838 s 22 (amended by the Statute Law (Repeals) Act 1969).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(4) MINING AND QUARRYING IN GLOUCESTERSHIRE/(ii) Gales/611. Nature of a gale.

(ii) Gales

611. Nature of a gale.

A free miner¹ of coal or iron has the right to require a grant to himself² of specified veins of coal or iron in a specified situation³. The grant, as also the subject matter of the grant, is known as a 'gale'⁴. No gale may be made of any inclosed land belonging to the Crown⁵. Grants of gales are made in accordance with the order of application⁶. The gaveller⁷ is not bound to grant a gale if he is of opinion that it would interfere with an existing gale⁸ or that, from its proposed situation or extent, it is not adapted for obtaining the mineral in the best manner⁹.

1 For the meaning of 'free miner' see PARA 608 note 11 ante.

2 Grants of coal and iron may only be made to free miners: Dean Forest (Mines) Act 1838 s 23.

3 The application must specify the veins and situation of the proposed grant: Award of Coal Mines 1841 Sch 2 r 11; Award of Iron Mines 1841 Sch 2 r 11. These awards are set out in Wood's Laws of the Dean Forest at 199 and 272. See also PARA 609 note 2 ante.

Only the Crown has the right to make such grants: *A-G v Mathias* (1858) 4 K & J 579.

4 See *Great Western (Forest of Dean) Collieries Co Ltd v Trafalgar Colliery Co Ltd* (1887) 3 TLR 724 at 725 per Kekewich J.

5 See the Dean Forest (Mines) Act 1838 s 64.

6 See *ibid* s 60; the Dean Forest (Mines) Act 1904 s 7 (both amended by the Statute Law (Repeals) Act 1969); and the Dean Forest Act 1906 s 2.

7 As to the gaveller see PARA 610 ante; and as to the exercise of his functions by the deputy gaveller see PARA 610 note 3 ante.

8 A valid application for a gale cannot be made unless the gale is empty at the time: *James v Young* (1884) 27 ChD 652.

9 Dean Forest (Mines) Act 1838 s 62. For the meaning of 'minerals' see PARA 12 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(4) MINING AND QUARRYING IN GLOUCESTERSHIRE/(ii) Gales/612. Extent of the gale.

612. Extent of the gale.

The extent of the gale¹ is determined by the gaveller², and in setting out the metes and bounds the gaveller must have regard to the probable cost of winning the mineral³ and the quantity of mineral likely to be obtained⁴. Every grant of a gale must specify the extent of the gale⁵.

1 For the meaning of 'gale' see PARA 611 ante.

2 As to the gaveller see PARA 610 ante; and as to the exercise of his functions by the deputy gaveller see PARA 610 note 3 ante.

3 For the meaning of 'minerals' see PARA 12 ante.

4 Dean Forest (Mines) Act 1838 s 56 (amended by the Statute Law (Repeals) Act 1969; and the Statute Law (Repeals) Act 1978); Award of Coal Mines 1841 Sch 2 r 11; Award of Iron Mines 1841 Sch 2 r 11. These awards are set out in Wood's Laws of the Dean Forest at 199 and 272. See also PARA 609 note 2 ante.

5 See the Dean Forest (Mines) Act 1838 s 56 (as amended: see note 4 supra).

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(4) MINING AND QUARRYING IN GLOUCESTERSHIRE/(ii) Gales/613. Grant of a gale.

613. Grant of a gale.

The grant of a gale¹ is made subject to any special rules and regulations thought necessary by the gaveller², and provides for the working of a minimum quantity of mineral in each year³, with liberty to make up short workings in any subsequent year⁴. An underlying seam may be galed even if an upper seam has been previously galed and the upper seam may be sunk through by the galee of the lower seam⁵. A free miner⁶ is not entitled to the grant of more than three gales at any one time, or to a fresh grant until one or more of the three existing gales is exhausted⁷, unless he surrenders a gale as not containing sufficient mineral to be workable⁸. To be effectual, the grant must be enrolled in the books of the gaveller or deputy gaveller, and a copy is given to the free miner⁹.

The general licensing requirements¹⁰ apply in the Forest of Dean and the Hundred of St Briavels as they apply in other areas¹¹.

The statutory rights to withdraw support from land¹² in connection with the working of coal or coal mines¹³ do not apply to land in respect of which the privileges of free miners are exercisable¹⁴. Nor do the provisions relating to subsidence damage¹⁵ which apply elsewhere in Great Britain¹⁶ apply in the Forest of Dean and the Hundred of St Briavels¹⁷.

1 For the meaning of 'gale' see PARA 611 ante.

2 Dean Forest (Mines) Act 1838 s 56 (amended by the Statute Law (Repeals) Act 1969; and the Statute Law (Repeals) Act 1978). The special rules must not be inconsistent with the Commissioners' general rules: Dean Forest (Mines) Act 1838 s 56 (as so amended). As to the gaveller see PARA 610 ante; and as to the exercise of his functions by the deputy gaveller see PARA 610 note 3 ante.

3 Award of Coal Mines 1841 Sch 2 r 13; Award of Iron Mines 1841 Sch 2 r 13. These awards are set out in Wood's Laws of the Dean Forest at 199 and 272. See also PARA 609 note 2 ante. For the meaning of 'minerals' see PARA 12 ante.

4 Award of Coal Mines 1841 Sch 2 r 14; Award of Iron Mines 1841 Sch 2 r 14; Award of Forest of Dean Mining Commissioners 1871 para 3. As to the awards of 1841 see note 3 supra. The award of 1871 is set out in Wood's Laws of the Dean Forest at 365. See also PARA 609 note 2 ante.

5 *Goold v Great Western Deep Coal Co* (1865) 2 De GJ & Sm 600.

6 For the meaning of 'free miner' see PARA 608 note 11 ante.

7 Dean Forest (Mines) Act 1838 s 61.

8 *Ellway v Davis* (1873) LR 16 Eq 294; and see *James v R* (1877) 5 ChD 153, CA.

9 Dean Forest (Mines) Act 1838 s 57 (amended by the Statute Law (Repeals) Act 1969).

10 As to the licensing of coal-mining operations see PARA 91 et seq ante.

11 However, the Coal Authority makes available a simplified form of licence for use in the Forest of Dean and the Hundred of St Briavels, which recognises the requirement for a licence but also the special customs (see PARAS 608 et seq ante, 614 et seq post) which exist in that area. As to the areas included in the Forest of Dean and the Hundred of St Briavels see PARA 608 ante. As to the Coal Authority see PARA 52 et seq ante.

12 Ie under the Coal Industry Act 1994 s 38: see PARA 178 ante.

13 For the meaning of 'mine' see PARA 5 ante.

14 See the Coal Industry Act 1994 s 40(4); and PARA 181 ante.

15 As to subsidence damage see PARA 184 et seq ante. As to subsidence damage by coal mining see PARA 202 et seq ante.

16 For the meaning of 'Great Britain' see PARA 1 note 1 ante.

17 See the Coal Mining Subsidence Act 1991 s 1(4)(a); and PARA 205 head (2) ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(4) MINING AND QUARRYING IN GLOUCESTERSHIRE/(ii) Gales/614. Effect of grant of a gale.

614. Effect of grant of a gale.

The right granted by a gale¹ of coal or iron mines² is of the nature of real estate limited to the galee, his heirs and assigns, but conditional upon the due payment of the rents, royalties and dues reserved³, and due performance and observance of the rules and regulations for the time being in force⁴ and contained in the awards⁵ and any special rules and regulations contained in the grant⁶. Non-compliance by the miner in any of these respects will render the gale liable to forfeiture⁷ although the specific remedy of forfeiture does not bar an action for damages⁸. Forfeiture is complete on service of notice, without actual entry by the gaveller or his deputy⁹.

1 For the meaning of 'gale' see PARA 611 ante. As to the grant of a gale see PARA 613 ante.

2 For the meaning of 'mine' see PARA 5 ante.

3 As to rents and royalties see PARA 620 post.

4 Dean Forest Act 1861 s 1; and see PARA 609 note 2 ante. It seems that non-domestic rates are payable in relation to active gales: see *Morgan v Crawshay* (1871) LR 5 HL 304; and RATING AND COUNCIL TAX.

5 See the Dean Forest (Mines) Act 1838 s 29.

6 See *ibid* s 56 (amended by the Statute Law (Repeals) Act 1969; and the Statute Law (Repeals) Act 1978).

7 Dean Forest (Mines) Act 1838 s 29. As to relief by the court, which cannot be granted after the expiration of six months, see *Re Brain* (1874) LR 18 Eq 389.

8 *Ross v Ruge-Price* (1876) 1 Ex D 269; *Brain v Thomas* (1881) 50 LJQB 662, CA.

9 *Ex p Young and Grindell* (1880) 50 LJ Ch 221; *James v Young* (1884) 27 ChD 652. As to the gaveller see PARA 610 ante; and as to the exercise of his functions by the deputy gaveller see PARA 610 note 3 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(4) MINING AND QUARRYING IN GLOUCESTERSHIRE/(ii) Gales/615. Transfer of gales.

615. Transfer of gales.

Gales¹ may be transferred either inter vivos or by will to any person or persons². A memorial in statutory form³ of every transfer by deed must be registered in the books of the gaveller⁴ within three months from its date⁵, or such extended period as the Forestry Commissioners⁶ for reasonable cause allow⁷, and if not so registered is void⁸. Registration may be refused if rent is unpaid⁹ or if the deed effecting a transfer subsequent to one which took place by will or descent does not contain a recital of the circumstances under which devolution by will or descent took place¹⁰. A memorandum of the entry is indorsed on the original certificate of the grant of the gale¹¹ or on the last preceding transfer¹². The transfer of a gale does not automatically transfer a licence under Part II of the Coal Industry Act 1994¹³. The licence must be the subject of a separate transfer, which is subject to the normal requirements of the Coal Authority in that regard¹⁴.

1 For the meaning of 'gale' see PARA 611 ante.

2 Dean Forest (Mines) Act 1838 s 23.

3 See the Dean Forest Act 1861 s 10, Schedule.

4 As to the gaveller see PARA 610 ante; and as to the exercise of his functions by the deputy gaveller see PARA 610 note 3 ante.

5 Dean Forest (Mines) Act 1838 s 58; and see also the Dean Forest Act 1861 s 11.

6 See PARA 610 text and note 2 ante. As to the Forestry Commissioners generally see FORESTRY vol 52 (2009) PARA 34 et seq.

7 Dean Forest (Mines) Act 1838 s 59.

8 Dean Forest Act 1861 s 14.

9 Ibid s 9.

10 Ibid s 11.

11 Dean Forest (Mines) Act 1838 s 58. As to the grant of a gale see PARA 613 ante.

12 Dean Forest Act 1861 s 12.

13 ie under the Coal Industry Act 1994 Pt II (ss 25-36) (as amended): see PARA 91 et seq ante.

14 See PARA 91 et seq ante. As to the Coal Authority see PARA 52 et seq ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(4) MINING AND QUARRYING IN GLOUCESTERSHIRE/(ii) Gales/616. Inclosed land.

616. Inclosed land.

Where mines¹ situated under inclosed land outside the Forest of Dean² belonging to private persons are galed³, the surface owner is entitled to half the profits⁴, and any owner of inclosed land is entitled to compensation assessed by the gaveller⁵ or deputy gaveller for surface damage⁶. No steam engine or dwelling house may be erected on inclosed land without the consent of the owner⁷.

1 For the meaning of 'mine' see PARA 5 ante.

2 As to the boundaries of the Forest of Dean, and the area in which the Gloucestershire customs are exercisable, see PARA 608 ante.

3 For the meaning of 'gale' see PARA 611 ante.

4 Dean Forest (Mines) Act 1838 s 67.

5 As to the gaveller see PARA 610 ante; and as to the exercise of his functions by the deputy gaveller see PARA 610 note 3 ante.

6 Dean Forest (Mines) Act 1838 s 68 (amended by the Statute Law (Repeals) Act 1969). The compensation may consist of a gross or an annual sum: Dean Forest Act 1861 s 16.

The statutory provisions do not extend to damage by subsidence, as a galee has no power to let down the surface: *Allaway v Wagstaff* (1859) 4 H & N 681. See also the Coal Mining Subsidence Act 1991 s 1(4)(a); and PARA 205 head (2) ante.

7 Dean Forest (Mines) Act 1838 s 69.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(4) MINING AND QUARRYING IN GLOUCESTERSHIRE/(ii) Gales/617. Working of gales.

617. Working of gales.

A galee must commence to open the mine¹ within five years of the date of the grant of the gale², but in case of accident or other unforeseen impediment the gaveller³ may give an extension of time⁴.

In working a gale general regulations must be complied with⁵. The mine must be worked in a workmanlike manner⁶; proper accounts and plans must be kept, which the gaveller or deputy gaveller is at liberty to inspect⁷; pits and level mounds must be in situations determined by the gaveller or his deputy⁸; the gaveller and his deputy and their agents have power to enter and inspect the mine⁹; and the person working coal must leave such barriers as may be directed by the gaveller or his deputy¹⁰. In one respect the obligations of a person working a gale are more onerous than those imposed by the general law: a person working a gale drained by a steam engine and situate near and to the rise of another must pump so as to prevent water flowing from one mine into the other¹¹. On the abandonment or disuse of a gale the surface must be restored¹².

The duty of performing and observing the rules and regulations is a personal obligation on the person for the time being in possession or receipt of the proceeds of the gale, whether as owner, lessee or underlessee¹³.

1 For the meaning of 'mine' see PARA 5 ante.

2 For the meaning of 'gale' see PARA 611 ante. As to the grant of a gale see PARA 613 ante.

3 As to the gaveller see PARA 610 ante; and as to the exercise of his functions by the deputy gaveller see PARA 610 note 3 ante.

4 Award of Forest of Dean Mining Commissioners 1871 para 2. This award is set out in Wood's Laws of the Dean Forest at 365. See also PARA 609 note 2 ante.

5 Dean Forest (Mines) Act 1838 s 29.

6 Award of Coal Mines 1841 Sch 2 r 9; Award of Iron Mines 1841 Sch 2 r 9. These awards are set out in Wood's Laws of the Dean Forest at 199 and 272. See also PARA 609 note 2 ante.

7 Award of Coal Mines 1841 Sch 2 r 16; Award of Iron Mines 1841 Sch 2 r 16. See note 6 supra.

8 Award of Coal Mines 1841 Sch 2 r 10; Award of Iron Mines 1841 Sch 2 r 10. See note 6 supra.

9 Dean Forest (Mines) Act 1838 s 53 (amended by the Statute Law (Repeals) Act 1969); Award of Coal Mines 1841 Sch 2 r 17; Award of Iron Mines 1841 Sch 2 r 17. See note 6 supra.

10 Award of Coal Mines 1841 Sch 2 r 18. See note 6 supra. The gaveller may permit the working of coal in any barrier on such terms as he thinks fit: Dean Forest Act 1861 s 24.

11 Award of Coal Mines 1841 Sch 2 r 19; Award of Iron Mines 1841 Sch 2 r 18. See note 6 supra. See also PARA 618 post.

12 Award of Coal Mines 1841 Sch 2 r 12; Award of Iron Mines 1841 Sch 2 r 12. See note 6 supra.

13 Dean Forest Act 1861 s 4.

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618. Surrender of gales.

A gale¹ or part of a gale may be surrendered on giving notice to the gaveller². A galee whose gale is drained by a steam engine or other machinery, and lies to the rise of another, must give to the gaveller or deputy gaveller, and also to the owner of the gale lying to the deep, three months' notice of his intention to discontinue working his engine³.

1 For the meaning of 'gale' see PARA 611 ante.

2 Award of Coal Mines 1841 Sch 2 r 6; Award of Iron Mines 1841 Sch 2 r 6; Dean Forest Act 1861 s 19. The awards are set out in Wood's Laws of the Dean Forest at 199 and 272. See also PARA 609 note 2 ante. As to the gaveller see PARA 610 ante; and as to the exercise of his functions by the deputy gaveller see PARA 610 note 3 ante.

The gaveller has power to accept a surrender of part only of a gale (Dean Forest (Mines) Act 1871 s 33); and, on such terms as he thinks fit, a surrender other than by notice (Dean Forest Act 1861 s 20).

3 Award of Coal Mines 1841 Sch 2 r 8; Award of Iron Mines 1841 Sch 2 r 8. See note 2 supra.

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619. Amalgamation, subdivision and rearrangement of gales.

Whenever the gaveller¹ thinks it desirable so to do, having regard to the proper opening or working of any gale² and to any representation made by any galee, he may by order in writing under his hand amalgamate, subdivide or otherwise rearrange the area of either any gales in hand or any existing gales³.

1 As to the gaveller see PARA 610 ante; and as to the exercise of his functions by the deputy gaveller see PARA 610 note 3 ante.

2 For the meaning of 'gale' see PARA 611 ante.

3 Dean Forest (Mines) Act 1904 s 1(1). However, this provision applies only to specified gales: see s 10(1), Schedule.

An order may not be made in respect of any existing gales without the consent of the galees, except where any gale is so situated that it cannot be separately worked without great injury or detriment to any adjoining or contiguous gale, or without greatly impeding the proper and effectual working of any of the beds or veins of coal within the Hundred of St Briavels which require the use of expensive pits, engines or machinery, or where the gale is so small or otherwise of such a character that it cannot properly or economically be developed and worked as a separate mine: s 1(3). Any such order must be advertised in at least two local newspapers (s 2); and the order takes effect, in respect of existing gales, as if it were a grant of new gales and must be enrolled accordingly (s 3(1)). In addition to any terms and conditions which may be specified in the grant, the order may contain such terms and conditions, including a provision requiring the payment of any sum or compensation by one galee to another, as the gaveller may think proper and as may be agreed to by the galees concerned or, in specified circumstances, determined by arbitration: s 3(2). As to the grant of a gale see PARA 613 ante. As to the areas included in the Hundred of St Briavels see PARA 608 ante.

Halsbury's Laws of England/MINES, MINERALS AND QUARRIES (VOLUME 31 (2003 REISSUE))/10. LOCAL RIGHTS AND CUSTOMS/(4) MINING AND QUARRYING IN GLOUCESTERSHIRE/(iii) Rents and Royalties/620. Rules relating to payment.

(iii) Rents and Royalties

620. Rules relating to payment.

Galeage rents¹ and royalties are usually due to the Crown in respect of each gale², and are payable by the person in possession or receipt of the proceeds of the gale, whether as owner, lessee or otherwise³. Every grant of a gale must specify the dead rents and royalties⁴, and in case of dispute the amount is determined by arbitration⁵. The rents and royalties of any gale may be revised every 21 years (or, in the case of certain gales⁶, 63 years⁷), reckoning from 24 June next following the grant⁸, and in case of dispute the amount of the revised rents and royalties must be fixed by arbitration⁹. The rents and royalties are recoverable by distress¹⁰ or in an action¹¹ by the gaveller¹².

1 'Galeage rents' include dead rents which the Commissioners under the Dean Forest (Mines) Act 1838 had power to award: *Lord Seymour v Morrell* (1851) 17 LTOS 139. Dead rents and royalties may also be reserved on making subsequent grants: Dean Forest (Mines) Act 1838 s 56 (amended by the Statute Law (Repeals) Act 1969; and the Statute Law (Repeals) Act 1978). Galeage rents are payable on 31 December, and royalties on 30 June and 31 December in each year: Dean Forest (Mines) Act 1871 s 35. No galeage rent is payable, in the case of coal mines, for the first two years, and in the case of iron mines for the first four years, after the grant of the gale, unless the minerals are actually wrought: Award of Coal Mines 1841 Sch 2 r 5; Award of Iron Mines 1841 Sch 2 r 5. These awards are set out in Wood's Laws of the Dean Forest at 199 and 272. See also PARA 609 note 2 ante. For the meaning of 'mine' see PARA 5 ante; for the meaning of 'minerals' see PARA 12 ante; and for the meaning of 'gale' see PARA 611 ante. As to the grant of a gale see PARA 613 ante.

2 As to the ancient rights of the Crown to share the profits of a gale see *Fourth Report of the Dean Forest Commissioners* (1831), which is set out in Wood's Laws of the Dean Forest at 88. See also *Doe d Thomson v Pearce* (1812) Peake Add Cas 242; *A-G v Jackson* (1846) 5 Hare 355 at 362-363 per Wigram V-C. See further PARA 610 text and note 2 ante.

3 Dean Forest Act 1861 s 4.

4 Dean Forest (Mines) Act 1838 s 56 (as amended: see note 1 supra). A parol agreement to pay a larger rent than that specified is not enforceable: *A-G v Jackson* (1846) 5 Hare 355 at 362-363 per Wigram V-C.

5 Dean Forest (Mines) Act 1838 s 56 (as amended: see note 1 supra). As to arbitration see ss 47-49; the Dean Forest Act 1861 s 8; and the Dean Forest (Mines) Act 1871 s 37.

6 The gales to which the Dean Forest (Mines) Act 1904 applies: see ss 4, 10(1), Schedule.

7 *Ibid* s 4.

8 See the Dean Forest (Mines) Act 1838 s 27 (amended by the Statute Law (Repeals) Act 1969); the Dean Forest (Mines) Act 1838 s 46; and the Dean Forest Act 1861 s 7.

9 See the Dean Forest (Mines) Act 1838 s 27 (as amended: see note 8 supra), ss 47, 48; the Dean Forest Act 1861 s 8; and the Dean Forest (Mines) Act 1871 s 37.

10 See the Dean Forest Act 1819 s 7 (amended by the Statute Law (Repeals) Act 1971); the Dean Forest (Mines) Act 1838 s 52; the Dean Forest Act 1861 s 4; and the Dean Forest (Mines) Act 1871 s 36.

11 Dean Forest Act 1819 s 8 (amended by the Statute Law (Repeals) Act 1971); and see the provisions cited in note 10 supra. As to proceedings by action for account see *A-G v Jackson* (1846) 5 Hare 355 at 368 per Wigram V-C.

12 *Lord Seymour v Morrell* (1851) 17 LTOS 139. As to the gaveller see PARA 610 ante; and as to the exercise of his functions by the deputy gaveller see PARA 610 note 3 ante.

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(iv) Quarries

621-700. Leases of quarries.

Free miners¹ in quarries² are eligible to have leases granted to them³. A renewal of a quarry lease may be made to a person not a free miner⁴. Lessees working quarries must observe certain general rules and regulations⁵.

1 For the meaning of 'free miner' see PARA 608 note 11 ante.

2 For the meaning of 'quarry' see PARA 6 ante.

3 Dean Forest (Mines) Act 1838 s 23. As to the power to grant leases see PARA 610 note 2 ante; and FORESTRY vol 52 (2009) PARA 44. There is no provision for quarries corresponding to the right of a free miner of coal or iron to require a gale to be granted to him (cf para 611 ante). As to confirmation of gales of quarries existing prior to statutory regulation see the Dean Forest (Mines) Act 1838 s 27 (amended by the Statute Law (Repeals) Act 1969); and the Award of Quarries 1841, which is set out in Wood's Laws of the Dean Forest at 291. See also PARA 609 note 2 ante.

4 Dean Forest (Mines) Act 1871 s 34.

5 See the Dean Forest (Mines) Act 1838 s 29; the Dean Forest Act 1861 ss 18, 19; and the Award of Quarries 1841 Sch 2. See note 3 supra.